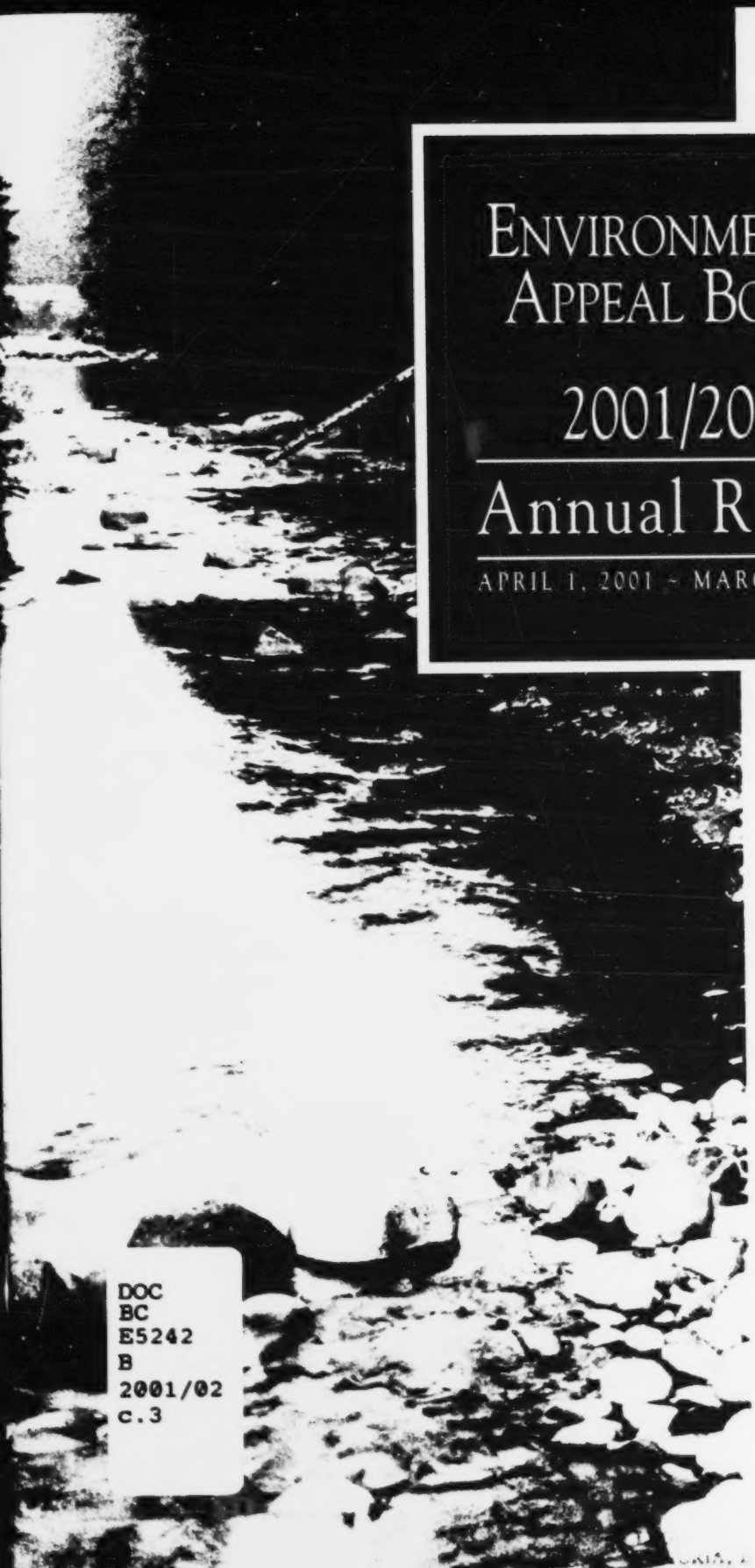

Environmental Appeal Board

2001/2002

Annual Report

APRIL 1, 2001 - MARCH 31, 2002

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Honourable Stan Hagen
Minister of Sustainable Resource Management
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Honourable Colin Hansen
Minister of Health Services
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Dear Ministers:

I respectfully submit herewith the Annual Report of the Environmental Appeal Board for the period April 1, 2001 through March 31, 2002.

Yours truly,

Alan Andison
Chair
Environmental Appeal Board

AR
01/02

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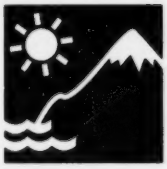


Message from the Chair

I am pleased to submit the eleventh Annual Report of the Environmental Appeal Board.

The number of appeals filed with the Board declined over this report period from 160 in 2000/01, to 128 this report period. The number of appeals filed under the *Health Act* and *Pesticide Control Act* decreased significantly, while the number of appeals filed under the *Waste Management Act* and *Wildlife Act* increased marginally. Appeals filed under the *Water Act* increased significantly while the most complex remained *Waste Management Act* appeals.

A number of Board members have departed during this reporting period. On behalf of the entire Board, I wish to thank Sheila Bull, Jackie Hamilton, Katherine Hough and Ken Maddox for their hard work and contributions to the Board. No new members were appointed during this report period.

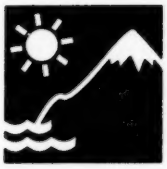
In the latter half of 2001, the Board was engaged in a comprehensive review of its operation as part of the Administrative Justice Project initiated by the Attorney General in July of 2001. The purpose of the Project is to foster greater public accountability and transparency, to enhance fairness and impartiality in decision-making, and to facilitate public access, public service excellence and professionalism through a review of the province's system of administrative justice. To this end, more than 60 administrative justice agencies in the province, including the Board, participated in a Core Services Review. The Core Services Review is being conducted in two phases: phase one involves a review of the agency's mandate; phase two involves a service delivery review.

In Fall 2001, the Board conducted a review of its mandate, and reported its findings and recommendations to the Administrative Justice Project. In its report, the Board described how it intends to focus its mandates and programs over the next five years in light of the government's New Era commitments. In particular, the Board addressed whether it serves a compelling public interest, provides its services in an affordable manner, and operates in a field where there is a legitimate and essential role for the public sector. The Board's recommendations are summarized in the "Recommendations" section of this Annual Report.

In November 2001, the Board's findings and recommendations were presented to the government's Core Services Review and Deregulation Task Force. The government released its conclusions on phase one of the review in February 2002. The phase one results are also summarized in the "Recommendations" section of this Annual Report.

In March of 2002, the Board made its submission on phase two of the review. The results of this phase have not yet been released.

Alan Andison



Introduction

The Environmental Appeal Board hears appeals from administrative decisions related to environmental issues. The information contained in this report covers the period of time between April 1, 2001 and March 31, 2002.

The report provides an overview of the structure and function of the Board and how the appeal process operates. It contains statistics on appeals filed, hearings held and decisions issued by the Board within the report period. It also contains the Board's recommendations for legislative changes to the statutes and regulations under which the Board has jurisdiction to hear appeals. Finally, summaries of the decisions issued by the Board during the report period are provided and sections of the relevant statutes and regulations are reproduced.

Decisions of the Environmental Appeal Board are available for viewing at the Board office, on the Internet, and at the following libraries:

- Legislative Library
- Ministry of Water, Land and Air Protection/Sustainable Resource Management Corporate Services Library
- University of British Columbia Law Library
- University of Victoria Law Library
- British Columbia Court House Library Society
- West Coast Environmental Law Library

Decisions are also available through the Quicklaw Data Base.

Information about the Environmental Appeal Board is available from the Board office and on the Board's website. Detailed information on the Board's policies and procedures can be found in the Environmental Appeal Board Procedure Manual. Pamphlets explaining the appeal procedure under each of the relevant statutes are also available. Please feel free to contact the office if you have any questions, or would like additional copies of this report. The Board can be reached at:

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The Board

The Environmental Appeal Board is an independent agency established under the *Environment Management Act* that hears appeals from administrative decisions made under six statutes. Four of the statutes are administered by the Ministry of Water, Land and Air Protection. They are the *Commercial River Rafting Safety Act*, the *Pesticide Control Act*, the *Waste Management Act* and the *Wildlife Act*. The *Water Act* is administered by the Ministry of Sustainable Resource Management. The sixth statute, the *Health Act*, is administered by the Ministry of Health Services.

Board Membership

The Board members are appointed by the Lieutenant Governor in Council (Cabinet) under section 11(3) of the *Environment Management Act*. The members are drawn from across the Province, representing diverse business and technical experience, and have a wide variety of perspectives. Board membership consists of a full-time chair, one or more part-time vice-chairs, and a number of part-time members.

The Board	From
Chair	
Alan Andison	Victoria
Vice-chair	
Jane Luke	Vancouver
Cindy Derkaz	Tappen
Members	
Sheila Bull (to October 29, 2001)	Salt Spring Island
Robert Cameron	North Vancouver
Richard Cannings	Naramata
Tracey Cook	Victoria
Don Cummings	Penticton
Joanne Dunaway	Vancouver
Margaret Eriksson	Vancouver
Glen Ewan	Golden
Jackie Hamilton (to October 29, 2001)	Victoria
Fred Henton	Nanoose Bay
Katherine Hough (to October 29, 2001)	Burnaby
Marilyn Kansky	Victoria
Ken Maddox (to October 29, 2001)	Prince George
Tawfiq Popatia	Vancouver
Carol Quin	Hornby Island
Bob Radloff	Prince George
Barbara Thomson	Victoria
Phillip Wong	Vancouver
Joan Young	Victoria

The Board Office

The Environmental Appeal Board office staffs nine full-time employees reporting to a General Counsel/Executive Director and the Chair. The office provides registry services, legal advice, research support, systems support, financial and administrative services, training and communications support for the Board.

The Environmental Appeal Board shares its staff and its office space with the Forest Appeals Commission. The Forest Appeals Commission, set up under the *Forest Practices Code of British Columbia Act*, hears appeals from forestry-related administrative decisions made under that Act, the *Forest Act* and the *Range Act*, in much the same way that the Board hears environmental appeals.

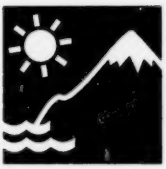
Each of the tribunals operates completely independently of one another. Supporting two tribunals through one administrative office gives each tribunal greater access to resources while, at the same time, cutting down on administration and operation costs. In this way, expertise can be shared and work can be done more efficiently.

Policy on Freedom of Information and Protection of Privacy

The appeal process is public in nature. Hearings are open to the public, and information provided to the Board by one party must also be provided to all other parties to the appeal.

The Board is subject to the *Freedom of Information and Protection of Privacy Act* and the regulations under that Act. If a member of the public requests information regarding an appeal, that information may be disclosed, unless the information falls under one of the exceptions in the *Freedom of Information and Protection of Privacy Act*.

Parties to appeals should be aware that information supplied to the Board is subject to public scrutiny and review.



Legislative Amendments Affecting the Board

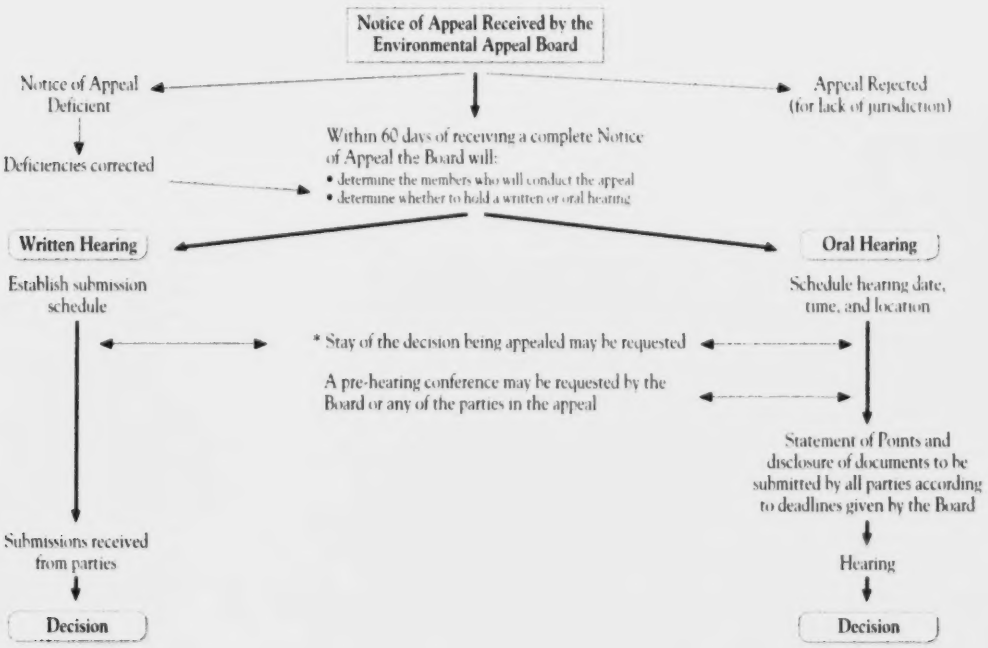
In this report period, the Board was not affected by any amendments to the statutes and regulations under which the Board has jurisdiction to hear appeals.

The Appeal Process

The *Environment Management Act* and the *Environmental Appeal Board Procedure Regulation* set out the general powers and procedures of the Board. The Board's authority is further defined in the statutes and regulations under which the Board has jurisdiction to hear appeals.

In order to ensure that the appeal process is open and understandable to the public, the Board has developed the Environmental Appeal Board Procedure Manual. The manual contains information about the Board itself, the legislated procedures that the Board is required to follow and the policies the Board has adopted to fill in the procedural gaps left by the legislation.

The following is a brief summary of the appeal process. For more detailed information, a copy of the Board's Procedure Manual can be obtained from the Environmental Appeal Board office, or from the Board's website.


Notice of Appeal Received by the Environmental Appeal Board
Notice of Appeal Deficient
Deficiencies corrected
Appeal Rejected (for lack of jurisdiction)
Within 60 days of receiving a complete Notice of Appeal the Board will:
• determine the members who will conduct the appeal
• determine whether to hold a written or oral hearing
Written Hearing
Establish submission schedule
Oral Hearing
Schedule hearing date, time, and location
* Stay of the decision being appealed may be requested
A pre-hearing conference may be requested by the Board or any of the parties in the appeal
Statement of Points and disclosure of documents to be submitted by all parties according to deadlines given by the Board
Submissions received from parties
Hearing
Decision
Decision

* The Board's authority to issue a stay varies from one statute to the next.

Recommendations

During the report period, the Board prepared a report for the Administrative Justice Project, a review of the province's administrative justice system. In the Board's report, it made certain recommendations that merit repeating here.

To promote further efficiencies and a more cost effective means of delivering services the Board made the following recommendations:

- Consolidate the Board with the Forest Appeals Commission, and any other agencies with similar mandates and functions, to "form a single tribunal with a unified, flexible appeal process that remains sensitive to the unique features of different Acts and the needs of stakeholders and government agencies";
- Adapt the mandate, policies and procedures of the consolidated tribunal to accommodate the government's shift towards results-based standards for regulating natural resource developments;
- Adapt the mandate, policies and procedures of the consolidated tribunal to accommodate any new areas where the regulated industry or the public demands a right to appeal government decisions to a tribunal with scientific or technical expertise; and
- Obtain legislative authority to encourage parties to settle appeals through negotiation and mediation.

On February 5, 2002, the government released the results of Phase 1 of its review of administrative justice agencies, in a report titled *Restructuring Administrative Justice Agencies*. At page 23 of that report, the government concluded as follows with respect to the Board and Commission:

- Both agencies serve a compelling public purpose by providing an impartial forum for the resolution of disputes. The agencies could improve their efficiency by fully consolidating their operations.

Pending Improvements:

- The Board and the Commission will be consolidated into a single tribunal, allowing for further administrative efficiencies through shared services and cross-appointments.

The government directed the Board and Commission to prepare and draft legislation to implement the consolidation.

Also in the reporting period, the Board prepared and submitted a report on the second phase of the Administrative Justice Review, the Service Delivery Review. The report makes recommendations including the following:

Certain aspects of the service delivery model could be improved including,

- Amend the enabling legislation of the Board/Commission so that the consolidated tribunal may order pre-hearing disclosure of documents and establish rules of practice and procedure.
- Implement a more proactive process for determining whether appeals may be settled through negotiation and mediation.
- Appoint a full-time, joint vice-chair to the Board and Commission for a fixed term.

The government had not released its report on phase two during this Annual Report period.

Statistics

The following tables provide information on the appeals filed with the Board during the report period.

Between April 1, 2001 and March 31, 2002 a total of 128 appeals were filed with the Board against 111 administrative decisions.

April 1, 2001 – March 31, 2002

Total appeals filed	**128**
Number of administrative decisions appealed	**111**
Appeals abandoned, withdrawn, or rejected	**59**
Hearings held on the merits of appeals	
Oral hearings completed	30
Written hearings completed	17
***Total hearings held on the merits of appeals**	**47**
Total oral hearing days	**80**
Decisions issued	
Final decisions	
Appeals allowed, allowed in part or referred back to original decision-maker	30
Appeals dismissed	31
Appeals dismissed with recommendations	1
Appeals dismissed subject to amendments	1
Total final decisions	**63**
Decisions on preliminary matters	**25**
Consent orders	**7**
Costs	
Costs awarded	0
Costs denied	3
Total costs decisions	**3**
Security for costs	
Security Awarded	0
Security Denied	0
Total security for costs decisions	**0**
Total decisions issued	**98**

***Note:** Most preliminary applications and post-hearing applications are conducted in writing. However, only the final hearings have been included in this statistic.

Appeal Statistics by Act

	Health Act	Pesticide Control Act‡	Waste Management Act	Water Act	Wildlife Act
Appeals filed during report period	18	13	31	40	26
Number of administrative decisions appealed	15	11	23	36	26
Appeals abandoned, withdrawn or rejected	10	12	12	16	9
Hearings held on the merits of appeals					
Oral hearings	3	3	6	9	9
Written hearings	2	1	2	0	12
Total hearings held on the merits of appeals	**5**	**4**	**8**	**9**	**21**
Total oral hearing days	**3**	**15**	**34**	**18**	**10**
Decisions issued					
Final decisions	6	28	7	5	17
Preliminary Applications	3	3	17		2
Costs	1		1		1
Consent Orders				3	4
Total decisions issued	**10**	**31**	**25**	**8**	**24**

▲

This table provides a summary of the appeals filed, hearings held and decisions issued by the Board during the report period, categorised according to the statute under which the appeal was brought. There were no appeals filed, heard or decisions issued under the *Commercial River Rafting and Safety Act* during the report period.

‡ There were a number of decisions under this statute where five or more appeals were held together.

◀ This table provides an overview of the total appeals filed, hearings held, and decisions issued by the Board during the report period. It should be noted that the number of decisions issued and hearings held during the report period does not necessarily reflect the number of appeals filed for the same period, because the appeals filed in previous years may have been heard or decided during the report period.

It should also be noted that two or more appeals may be heard together.

Decisions issued by the Board under each Statute

In an appeal, the Board will decide whether to allow the appeal, dismiss the appeal or return the matter back to the original decision-maker with directions. The Board may also be required to deal with a number of preliminary matters such as requests for stays, applications regarding standing and questions regarding the Board's jurisdiction.

The following tables provide a summary of decisions issued by the Board, including any decisions regarding preliminary matters dealt with by the Board.

Health Act

Administrative Decision Appealed	Preliminary Matter	Appeal Allowed	Appeal Allowed in Part	Appeal Dismissed	Appeal Dismissed with Recommendations	Consent Order	Application for Costs
Refusal to issue a permit	1			2	1		
Issuance of a permit	2		1	2			1

Pesticide Control Act

Administrative Decision Appealed	Preliminary Matter	Appeal Allowed	Appeal Dismissed	Appeal Dismissed Subject to Amendments	Referred back to Original Decision-maker	Application for Costs
Issuance of a permit	3		1	1		
Pest Management Plan					26	

Waste Management Act

Administrative Decision Appealed	Preliminary Matter	Appeal Dismissed	Application for Costs
Issuance of permit	3		
Amendment of a permit	2	2	
Remediation order	2	4	
Issuance of approval	1		
Amendment of an Operational Certificate		1	
Preliminary determination of contaminated site	5		1
Non-compliance letter/report	3		
Warning letter	1		

Water Act

Administrative Decision Appealed	Appeal Allowed in Part	Appeal Dismissed	Consent Order
Refusal to issue a licence	1	1	
Cancellation or Suspension of a licence			2
Amendment of conditional licence		1	1
Refusal to grant an approval		2	

Wildlife Act

Administrative Decision Appealed	Preliminary Matter	Appeal Allowed	Appeal Allowed in Part	Appeal Dismissed	Consent Order	Application for Costs
Refusal to issue a licence or permit		1		11	1	
Change to quota under a licence				4		1
Suspension or Cancellation of a licence or permit			1		3	
Registration of trapline	2					

Summaries of Environmental Appeal Board Decisions

April 1, 2001 ~ March 31, 2002

The following are summaries of decisions issued by the Environmental Appeal Board between April 1, 2001 and March 31, 2002. They are organized according to the statute under which the Ministry or independent health board official's decision was appealed.

Commercial River Rafting Safety Act

No decisions were issued under the *Commercial River Rafting Safety Act* during the report period.

Health Act

2000-HEA-030 Cameron and Christina Gair v. Environmental Health Officer
Decision Date: May 9, 2001
Panel: Don Cummings

Cameron and Christina Gair appealed a decision of the Environmental Health Officer ("EHO") refusing to issue a sewage disposal permit. The Appellants applied for a permit to install an innovative technology based waste treatment system. The system included a BioGreen treatment plant and a sand infiltration bed. The Appellants sought an order rescinding the EHO's decision on the grounds that the slope of the property was less than that cited in the EHO's report, and that the discharge produced by the proposed system would not contaminate neighbouring land.

The Board determined that the permit application should be considered under section 3(3) of the *Sewage Disposal Regulation* (the "*Regulation*"), not section 7(1)(b), as it did not include a conventional absorption field. The Board found that the EHO had unreasonably imposed increasingly more stringent requirements, and that the Appellants had complied with the relevant policies by consulting an engineering firm. In addition, the Board determined that the proposed system would safeguard public health with respect to any risks related to the slope of the property. Overall, the Board was satisfied that the public health would not be endangered by the proposed treatment system if the Appellants could provide further information confirming that the property contains a suitable reserve field, or that a reserve field is not necessary. The Board recommended that the EHO issue a permit for the proposed system if the Appellants could address the Board's concerns. The appeal was dismissed, with recommendations.

2000-HEA-036(b), 037(b), 038(b) British Columbia Shellfish Growers Association et al. v. Environmental Health Officer (Timberman Developments Ltd. et al., Third Party)
Decision Date: July 20, 2001
Panel: Alan Andison

This was an appeal of the decision of the EHO to issue a sewage disposal system permit for a resort development on Cortes Island. The Appellants alleged that the EHO erred in issuing the permit because he underestimated the daily sewage flow from the development. The Appellants sought an order rescinding the permit. Some of the Appellants also sought different remedies. One of the Appellants applied for an award of costs.

The Board found that the EHO did not err in his estimation of daily sewage flow of the development. The Board found that the proposed sewage disposal system would protect public health. However, the Board rescinded the permit on the basis that the Third Party failed to comply with the notice requirements in the *Regulation*, resulting in a breach of natural justice. The appeal was allowed in part. The application for costs was denied.

2001-HEA-004(a) Mark Burgert v. Environmental Health Officer
Decision Date: June 7, 2001
Panel: Alan Andison

Mr. Burgert filed an appeal against the February 14, 2001 letter of the EHO regarding the issuance of a permit to repair a conventional septic tank sewage disposal system for his property. The letter described the constraints on the site chosen for the disposal field, and provided Mr. Burgert with suggestions for several alternatives.

The EHO requested that the Board dismiss the appeal on the grounds that the letter did not constitute an appealable decision and that the Board did not have jurisdiction to hear Mr. Burgert's appeal.

The Board found that the letter constituted a rejection of the permit application. Accordingly, the Board had jurisdiction to hear the appeal.

2001-HEA-004(b) Mark Burgert v. Environmental Health Officer
Decision Date: November 7, 2001
Panel: Alan Andison

Mark Burgert appealed the decision of the EHO refusing to issue a permit to repair a conventional septic tank system constructed prior to 1985.

The Board considered whether Mr. Burgert's existing sewage disposal system, when repaired according to the permit application, would constitute a health hazard (section 7(2) of the *Regulation*).

The Board found that the existing septic tank allowed solid waste to leak into the distribution box and pipe, and that the existing sewage disposal field had at least once become saturated to the point of causing effluent to pool upon the ground. The repaired sewage disposal system described in the application would continue to use both the existing septic tank and between 25% and 50% of the existing disposal field.

The Board found that the sewage disposal system when repaired according to the application could, on a balance of probabilities, constitute a health hazard. Accordingly, the appeal was dismissed.

2001-HEA-006 I.B. Moller v. Environmental Health Officer
Decision Date: August 8, 2001
Panel: Don Cummings

I.B. Moller appealed the decision of the EHO to refuse to issue a permit for construction of a sewage disposal system incorporating a Biocycle Model 5800 sewage treatment plant on a property in White Rock. The Appellant asked for an order rescinding the decision of the EHO.

The Board considered each of the EHO's concerns in relation to whether the proposed system would adequately protect human health. The concerns included the depth of porous soil, setback distances, house perimeter drains, the need for additional safeguards to ensure that the proposed system would continue to function properly, the size of the property, the suitability of a dry well, and the need for a reserve absorption field. The Board found that there was a lack of substantive data to confirm whether there was sufficient depth of suitable soil on the property to provide adequate treatment of effluent. It agreed with the EHO that there was a valid concern about the potential for effluent breakout, and that a dry well was inappropriate since it would create a situation where untreated effluent could rise to the surface of the land.

Accordingly, the Board concluded that the proposed sewage treatment system posed a threat to the public health. The appeal was dismissed.

2001-HEA-009 Wilfred and Dorothy Reason v. Environmental Health Officer (Dr. Bruce Senini, Third Party)

Decision Date: November 23, 2001

Panel: Alan Andison

Wilfred and Dorothy Reason appealed the decision of the EHO to issue a sewage disposal permit to Dr. Bruce Senini for construction of a conventional package treatment plant system on a property where Dr. Senini planed to construct a dental clinical.

The Board first considered whether the slope and soil conditions on the property would cause a risk to public health. The Board found that the slope of the property, distance to the property line, and depth of soil to an impervious layer were all sufficient to ensure that the system complied with the *Regulation* and would protect public health.

The Board next considered whether the proposed sewage treatment plant could adequately treat the volume of effluent that would be discharged into the system. The Board found that the 320-gallon per day estimate was reasonable and that the system was capable of treating this level of sewage flow.

Lastly, the Board considered whether the discharge of mercury into the system would cause a risk to public health. The Board found that the proposed amalgam separator system would ensure that mercury would not be introduced into the sewage treatment plant or the ground absorption field. The amalgam separator would capture between 95% and 100% of any mercury amalgam that potentially could enter the waste stream. Any remaining amalgam would then be caught in the sludge trap before it entered the treatment plant. Accordingly, the appeal was dismissed.

2001-HEA-012(a) Gina and Armin Mäerkl v. Environmental Health Officer (C. Derek Hood, Third Party)

Decision Date: September 11, 2001

Panel: Alan Andison

Gina and Armin Mäerkl applied for an adjournment of the appeal hearing regarding a sewage disposal permit. The EHO applied to have a site visit during the course of the hearing and to have the hearing moved from Courtenay to Denman Island.

The Board denied both the application for an adjournment and the applications for a site visit and a change of venue. The hearing was scheduled for an additional day.

2001-HEA-012(b) Gina and Armin Mäerkl v. Environmental Health Officer (C. Derek Hood, Third Party)

Decision Date: October 16, 2001

Panel: Alan Andison

Gina and Armin Mäerkl appealed the decision of the EHO to issue a sewage disposal permit to C. Derek Hood for construction of a conventional package treatment plant system for a single-family residence on Denman Island.

The Board first considered whether the gully on the lot was a non-tidal water body as described in the *Regulation*. The Board found that it was not a tidal water body because there was no evidence of a high water mark in the gully, no evidence that the gully had, in recent history, been a watercourse, and no evidence of erosion along the inner walls or the floor of the gully to show that water regularly passed through it.

The Board next considered whether the permit complied with the provisions of the *Regulation* and the guidelines in the On-Site Sewage Disposal Policy respecting percolation rate, setback from a high water mark, setbacks to breakout, slope, and depth to the groundwater table. The Board found that the permit complied with the *Regulation* and Policy with regards to all of these factors.

Lastly, the Board considered whether the permit otherwise protected public health. The Board found that the service contract was adequate to protect public health in the event of a failure of the system. The Board found that a back up generator would be installed to ensure that the system would continue to function during power outages and there was no evidence that the proposed system would create a risk of contamination to shellfish. The appeal was dismissed.

Pesticide Control Act

99-PES-009(c) Raincoast Research Society v. Deputy Administrator, Pesticide Control Act (International Forest Products Ltd. and Tsawataineuk Band Council, Third Parties)

Decision Date: May 2, 2001

Panel: Jane Luke, Dick Cannings, Jackie Hamilton

Raincoast Research Society appealed a decision by the Deputy Administrator to issue a pesticide use permit to International Forest Products Ltd. ("Interfor"). The permit authorized the use of glyphosate (*Vision*) for brush control on selected cutblocks in and around Kingcome Inlet. Raincoast sought an order that the permit be cancelled.

Raincoast appealed on the grounds that the permit made inadequate provision for the protection of the environment, including the protection of fish, wildlife, and riparian areas. It also claimed that the method of herbicide application authorized by the permit was not allowed under the federally approved label for *Vision*.

The Board found that the herbicide *Vision* is generally safe and will not create an unreasonable adverse effect provided that it is used in accordance with its label and is applied safely. The Board found that although *Vision* may be harmful to fish, there was insufficient evidence to show that the buffer zones set out in the permit would not provide sufficient protection against an adverse impact on fish. The Board also found that the application methods authorized by the permit were consistent with the label, and that the characteristics of the spray sites did not prevent safe herbicide application.

The Board found that there were several instances of improper stream classification on the maps provided in Interfor's permit application, and

that these errors presented some unreasonable risk to the environment. However, the Board found that the permit requirements rectified the risk by requiring Interfor to provide revised maps before applying any herbicide. Thus there was no need to deny or amend the permit.

The Tsawataineuk Band Council, a Third Party to the appeal, argued that the permit should not have been issued because the Band had not been adequately consulted about the pesticide application on their territory. The Board found that there was insufficient evidence to decide this issue, but recommended that better communication with the First Nations that may be affected by the application should take place in the future.

The Board found that the Appellant did not establish that the application of *Vision* would cause an unreasonable adverse effect. The appeal was dismissed.

2000-PES-016(c) Squamish-Lillooet Regional District v. Deputy Administrator, Pesticide Control Act (BC Rail Ltd., Third Party)
Decision Date: June 8, 2001
Panel: Alan Andison, Carol Quin, Katherine Hough

The Squamish-Lillooet Regional District ("SLRD") appealed a decision by the Deputy Administrator to issue a pesticide use permit to BC Rail Ltd. The permit authorized the application of specified pesticides to the ballast and siding areas of BC Rail's railway right-of-way for the purposes of vegetation management. SLRD sought an order revoking the permit or, alternatively, substantially amending it.

The Board found that the use of pesticides as authorized would not cause an adverse effect on human health or the environment arising from surface or groundwater contamination. The Board further found that effective ballast vegetation control was required for safety reasons, and no reasonable alternative to pesticides has been proven to exist for vegetation control in the ballast.

The Board found that BC Rail complied with the requirements of the *Pesticide Control Act Regulation* and the permit in regards to public notification. However, the Board found that if signs notifying of the treatment are posted only immediately prior to spraying, some members of the public who could be affected by the pesticide use may not have sufficient time to take precautions before treatment begins. The Board found that the permit should be amended to require that it be posted in more than one location within the SLRD that is reasonably accessible to potentially affected residents. In addition, signs advising of pesticide use should be posted at well-defined pedestrian crossings and all road crossings at least four days in advance of spraying. The permit was upheld, subject to amendments. The appeal was dismissed.

2000-PES-018(c); 019(c); 020(c) Corporation of the District of North Vancouver, Squamish-Lillooet Regional District, C-Dar World Forest Foundation v. Deputy Administrator, Pesticide Control Act (BC Rail Ltd., Third Party)
Decision Date: September 12, 2001
Panel: Alan Andison

The SLRD requested an adjournment of the appeal regarding the issuance of a pesticide use permit to BC Rail Ltd. SLRD believed that the adjournment was necessary to work on a political resolution of the matter. In particular, the SLRD stated that it did not have the financial or staff resources to continue with the appeal on technical merit, and therefore must pursue alternative measures such as political resolution. The Third Party objected to the adjournment.

The Board found that the SLRD's request to pursue a political resolution was too uncertain to warrant an adjournment. The Board also found that

the Third Party would be prejudiced by an adjournment. Accordingly, the application for an adjournment was denied.

2000-PES-025(b) to 042(b); 044(b) to 049(b); 052(b); 053(b) Northwest BC Coalition for Alternatives to Pesticides, Lakes District Friends of the Environment, Tony Harris, Christoph Dietzfelbinger, John Smith, Dave Stevens v. Deputy Administrator, Pesticide Control Act (Canadian Forest Products Ltd., Third Party)
Decision Date: December 4, 2001
Panel: Cindy Derkaz, Joanne Dunaway, Fred Henton

The Appellants appealed the decision of the Deputy Administrator to approve a pest management plan ("PMP") submitted by Canadian Forest Products Ltd. ("Canfor"), authorizing the use of herbicides *Vision* and *Release* to manage vegetation competing with crop trees.

The Board considered whether the Deputy Administrator exceeded her jurisdiction when she approved the PMP in the absence of regulations enacted under the *Pesticide Control Act*. Based on its interpretation of section 6(3) of the Act, the Board held that a Deputy Administrator has jurisdiction to approve a PMP under this section even if no regulations have been made in respect of PMPs.

The second issue was whether there was adequate consultation during the development of the PMP with the Regional Pesticide Review Committee (RPRC), First Nations, stakeholders and the public. The Board found that there had not been adequate consultation. The Board referred the PMP back to the Deputy Administrator so that the RPRC could complete its review, and the Deputy Administrator could send written notice to those stakeholders who did not receive either written notice or a copy of the draft PMP during its development.

The third issue was whether the PMP, as approved by the Deputy Administrator, was flawed. The Board found that the PMP was based on integrated pest management, but did not contain clear objectives and strategies for non-timber resources. The Board held that the Deputy Administrator should require, as a condition of the PMP, that Canfor provide particulars of all annual brushing activities (chemical and non-chemical) in its yearly follow-up reports to the Deputy Administrator, so she could monitor whether pesticide use is being reduced. The Board referred the PMP back to the Deputy Administrator to ensure that there will not be an unreasonable adverse effect on the environment as a result of pesticide applications under the PMP.

The fourth issue was whether the application of pesticides authorized by the PMP would have an adverse effect on human health or the environment and, if so, whether that adverse effect was unreasonable in the circumstances. The Board found that, on a balance of probabilities, there would not be an adverse effect on human health if the pesticides were applied as authorized by the PMP. The Board referred the PMP back to the Deputy Administrator so that the Habitat Protection Section of the Ministry's Skeena Region could ensure that the PMP adequately addresses any recommendations in respect to habitat zonation, biodiversity, monitoring and other measures for the protection of the environment.

The Board also considered whether the Deputy Administrator erred in approving notifications of intent to treat ("NITs") for the year 2000 that were approved before she approved the PMP. The Board accepted that much of the fieldwork for the first NITs was carried out the season before the PMP was finalised. However, the Board found that the detailed site assessments for the year 2000 NITs did not meet all of the requirements of the PMP and her approval decision. The Board was also concerned that members

of the public with site specific concerns about a proposed treatment area should not receive less notice of the treatment during the first year of a PMP. The Board recommended that PMPs be approved before NITs are advertised and submitted to the Deputy Administrator.

The Board found that the PMP should be amended to ensure that pesticide treatments were carried out within the term of the PMP. It also decided that the term of the PMP should be extended to December 31, 2006. Accordingly, the Board sent the PMP back to the Deputy Administrator with directions.

2001-PES-003 Josette Wier v. Deputy Administrator, Pesticide Control Act (Ministry of Forests, Morice Forest District, Third Party)
Decision Date: July 6, 2001
Panel: Alan Andison

Josette Wier applied for a stay of the Deputy Administrator's decision to issue a pesticide use permit to the Ministry of Forests. The permit authorized the use of monosodium methane arsenate for beetle control in the Morice Forest District and Tweedsmuir Provincial Park.

The Board found there were serious issues to be tried as there were issues concerning the adequacy of public notice of the application, and the potential for harm to the environment and human health. However, the Appellant failed to establish that there would be irreparable harm to the environment or human health from the proposed pesticide application. On a balance of convenience, the Board also determined that Ms. Weir did not demonstrate that the potential for harm to her interests if a stay was denied outweighed the potential for harm to the Ministry if the stay was granted. On the contrary, the potential for harm arising from safety hazards, harm to trees, and increased economic loss outweighed the potential for harm to the environment and human health. The application was dismissed.

2001-PES-009(a) Kwicksutaineuk ahkwa'mis Tribe, Gwawaenuk Tribe, Tsawataineuk Tribe, Musgamagw Tsawataineuk Tribal Council, Blackfish Lodge, Nakia Lodge, Echo Bay Resort, Mainland Enhancement of Salmonid Species, Broughton Archipelago Stewardship Alliance, Raincoast Research Society v. Deputy Administrator, Pesticide Control Act (International Forest Products Ltd., Third Party)
Decision Date: September 21, 2001
Panel: Alan Andison

The Appellants applied for an interim stay of a pesticide use permit issued to International Forest Products Ltd. ("Interfor"). They applied for a stay after learning that treatments under the permit would be completed prior to the deadline for submissions on the stay application.

The Board found that irreparable harm would not result to the environment under the current spraying program. In addition, the Board found that Interfor had expended substantial financial resources to put the program in place, which would be lost if an interim stay was granted at such a late date. This financial loss outweighed any potential limited risk to the environment. Accordingly, the application for an interim stay was denied.

Waste Management Act

98-WAS-014(c), 030(a), 034(a) and 99-WAS-015(a) Thomas Lawson v. Deputy Director of Waste Management (BC Assets and Lands Corporation, BC Hydro and Power Authority, Canadian Pacific Railway, CGC Inc., General Chemical Canada Ltd., HAL Industries Inc., Lehigh Portland Cement Limited and Ocean Construction Supplies Ltd., Norecol, Dames & Moore, Inc., North Fraser Harbour Commission, Zeal Industries (1974) Ltd., Third Parties)
Decision Date: September 19, 2001
Panel: Alan Andison, Dr. Robert Cameron, Don Cummings

Thomas Lawson appealed his inclusion as a responsible person in a remediation order issued by the Deputy Director on May 20, 1998.

The main issue before the Board was whether Mr. Lawson was a responsible person within the meaning of the *Waste Management Act*, either personally, or in his capacity as president and director of Globe West Products Inc. ("Globe West"), Globe Asphalt Products Ltd., or GN Industries Inc. The Board found that contamination occurred during Globe West's tenure at a site. Because there was no dispute that Globe West was a former owner and operator of the site, the Board found that Globe West was a responsible person under section 26.5 of the Act.

The Board held that a director or officer of a corporation, that is or was an owner or operator, can be deemed responsible for remediation under the *Waste Management Act*. One of the purposes of the Act is that beneficiaries of contamination, including directors and officers, are responsible for site remediation. The Board held that as a director and officer of a corporation that was owner and operator of the site, Mr. Lawson was a responsible person in relation to the site.

The Board found that Mr. Lawson could be held responsible in his own right for contamination at the site following the dissolution of Globe West in 1986. The Board noted that he was acting in his personal capacity when he provided instructions, signed contracts, and corresponded with businesses and the owner of the site regarding the decommissioning. It was clear that Mr. Lawson held a significant degree of control over, and was responsible for approving, certain operations at the site during the decommissioning. As such, Mr. Lawson was an operator at the site, within the meaning of section 26 of the Act, and was a person responsible for remediation under section 26.5(1)(b).

The Board also considered whether Mr. Lawson could be named in the order if he was not a "most substantial contributor" to the contamination. The Board stated that the Deputy Director is not limited by section 27.1(4) to naming those persons who are "most substantial contributors" to the contamination of the site. Section 27.1(1) clearly states that remediation order can be issued to any person. Therefore, the Board concluded that Mr. Lawson could be named in the order.

Accordingly, the Board found that Mr. Lawson was properly named in the remediation order as a person responsible for remediation. The appeal was dismissed.

99-WAS-047 Terry Jacks v. Deputy Director of Waste Management (Howe Sound Pulp and Paper Limited, Third Party)
Decision Date: April 4, 2001
Panel: Cindy Derkaz, Dr. Robert Cameron, Joanne Dunaway

This was an appeal by Terry Jacks against a decision by the Deputy Director upholding the Regional Manager's decision to amend a permit issued to Howe Sound Pulp and Paper Limited for

its pulp and paper mill at Port Mellon, B.C. The amendments increased the air emission limits for both sulphur dioxide and nitrogen oxides from the wood residue boiler at the mill.

Mr. Jacks argued that the Regional Manager did not have the authority to amend the permit to increase allowable emission limits because section 13(1) of the *Waste Management Act* requires that any amendment be "for the protection of the environment." The Board rejected this argument.

Mr. Jacks also argued that the Regional Manager increased the limits to levels substantially higher than the actual emissions from the boiler and that such an increase is not "for protection of the environment." The Board found that the amended limits would not cause an unacceptable adverse effect on human health or the environment, and that the increase in the emission limit for sulphur dioxide was not excessive. However, it found that the emission limits for nitrogen oxides were probably excessive. The Board was concerned that unnecessarily high limits impugn the integrity of the regulatory system, but found that it did not have sufficient evidence to lower the nitrogen oxides emission limits. As a result, the Board approved and adopted the Deputy Director's directions to the Regional Manager, which included studying the need for additional controls on nitrogen oxide emissions from the mill. The appeal was dismissed.

2000-WAS-028(a); 2000-WAS-031(a) Joan Sell and Don McIvor on behalf of Sierra Club of British Columbia – Quadra Island Group and Reach for Unbleached! v. Assistant Regional Waste Manager (Island Cogeneration Limited Partnership, Third Party)

Decision Date: May 11, 2001

Panel: Alan Andison

Joan Sell and Don McIvor, on behalf of the Sierra Club of British Columbia – Quadra Island Group, and Reach for Unbleached!, requested that the permit issued to Island Cogeneration Limited Partnership ("Island Cogeneration") be rescinded and sent back to the Regional Manager with directions on the grounds that the Regional Manager fettered his discretion by deferring to the Project Approval Certificate issued under the *Environmental Assessment Act*, instead of exercising his jurisdiction under the *Waste Management Act*. The Appellants further submitted that the Board should make the decision without allowing the Regional Manager to adduce new evidence regarding the reasons for his decision.

The Regional Manager submitted that the issue of fettering requires consideration of the entirety of the decision making process and thus should be dealt with at an oral hearing. He also noted that the relief sought by the Appellants was not merely procedural in nature but would decide the merits of the appeal. Island Cogeneration agreed with these submissions and further submitted that the Board should not consider the issue of fettering because it was not raised in the Appellants notice of appeal, and they had not applied to have it amended.

The Board found that it has the authority to amend a notice of appeal at the request of a party or at its own direction, provided that it does not prejudice any of the parties. It determined that the issue of fettering raised questions of both law and fact and, as such, required consideration of the whole decision making process. Thus, the matter would best be dealt with at a full hearing of the appeal.

The Board also found that parties should not be precluded from presenting additional evidence with regard to the issue of fettering. The Board noted that it has the authority to conduct an appeal as a hearing de novo, which would correct any errors made by the Regional Manager. Further,

the Board found that it may be more efficient and expedient for all of the parties if all issues in the appeal were heard in full. The Board denied the applications.

2001-WAS-010 Ermes Culos v. Assistant Regional Waste Manager (Village of Cache Creek, Wastech Services Limited, Third Parties)
Decision Date: December 21, 2001
Panel: Alan Andison

Mr. Culos appealed the decision of the Regional Manager to amend a section of the operational certificate authorizing the Village of Cache Creek and Wastech Services Limited to operate a municipal solid waste landfill. The amendment reduced the frequency of leachate testing within the landfill. Mr. Culos submitted that the reduction would inadequately protect the environment, and requested that the amendment be overturned.

The Board found that the amendment was reasonable, and adequately protected the environment. The Board accepted that the leachate samples collected had not revealed any appreciable trends in the composition of leachate, which would justify the previous sampling schedule. Further, the Board found that Mr. Culos provided insufficient evidence to establish that the reduction of leachate testing within the landfill posed any risk to the environment. Accordingly, the appeal was dismissed.

2001-WAS-011(a) & 2001-WAS-012(a) Alfred and Norma Penner and Petro-Canada Limited v. Regional Waste Manager (Husky Oil Operations Limited, Mohawk Oil Company Limited, Race Trac Fuels Ltd., Third Parties; Linda Geddes, Applicant)
Decision Date: January 10, 2002
Panel: Alan Andison

Linda Geddes applied to the Board to be added as a party to these appeals regarding the issuance of a remediation order. Ms. Geddes resides adjacent to a gas station which is alleged to be the source of the contamination described in the order, as well as the contamination which rendered her domestic well unusable.

In considering whether to grant Ms. Geddes full party status, the Board considered whether she had a valid interest in participating, and whether she could be of assistance in these appeals. The Board found that she had an interest in these matters and that, since any remediation measures taken pursuant to the order could ultimately affect her ability to resume using her domestic well, she had an interest in ensuring that the order names responsible persons who have sufficient resources to complete the remediation.

Additionally, the Board noted that Ms. Geddes was the only affected landowner seeking to participate in the appeals and that her complaint led to the investigation which resulted in the remediation order. Finally, the Board noted that she could have a unique perspective as a neighbour who had observed operations at the gas station. Accordingly, Ms. Geddes was granted full party status in these appeals.

2001-WAS-013(a) Paddy Goggins v. Assistant Regional Waste Manager (Weyerhaeuser Company Limited, Third Party)
Decision Date: August 10, 2001
Panel: Alan Andison

Paddy Goggins appealed a decision of the Regional Manager to amend a pollution permit held by Weyerhaeuser Company Limited. After receiving Mr. Goggins' notice of appeal, the Board advised the parties that the appeal may proceed by way of written submissions, and provided the parties with an opportunity to respond to that proposal.

Mr. Goggins submitted that the hearing should be conducted by way of an oral hearing. The Regional Manager and Weyerhaeuser had no

objection to conducting the hearing by way of written submissions.

The Board found its main consideration in determining whether to hold an oral or written hearing was whether the parties would be afforded the opportunity to present their cases in a full and fair manner. In this case, the Board was satisfied that evidence and submissions relating to this matter would be fully and fairly provided by way of written submissions. The Board ordered that the appeal would be heard on the basis of written submissions. The application for an oral hearing was denied.

2001-WAS-013(b) Paddy Goggins v. Assistant Regional Waste Manager (Weyerhaeuser Company Limited, Third Party)
Decision Date: December 10, 2001
Panel: Alan Andison

Paddy Goggins appealed the decision of the Regional Manager to amend a permit held by Weyerhaeuser Company Limited authorizing the controlled open burning of coarse wood residue generated by a dry land log sorting operation located at the north end of Powell Lake.

The Board considered three issues. First, it found that the Regional Manager complied with the applicable statutory notice provisions. Secondly, the Board held that the weight of evidence supported a finding that, on a balance of probabilities, the permitted burning would not have unreasonable adverse effects on human health and the environment. The Board noted that the permit contained a number of conditions designed to ensure that the burning did not result in pollution that could harm the environment or human health. This included numerous restrictions on the timing and duration of burning, and conditions to control the amount of smoke emitted.

Lastly, the Board considered whether there were reasonable alternatives for reducing, reusing or recycling the wood debris, and concluded that neither continued landfilling nor incineration were reasonable alternatives to the permitted open burning. Accordingly, the appeal was dismissed.

2001-WAS-014(a)/017(a)/018(a)/020(a)/021(a) Imperial Oil Limited, H. Hagman Holdings Limited, Bri-Don Installations Ltd., Otto Hagman and Thomas R. O'Neill, Edward and Yrsa Hagman v. Assistant Regional Waste Manager (Sanbo Developments Limited, Third Party)
Decision Date: January 23, 2002
Panel: Alan Andison

The Appellants appealed the Regional Manager's preliminary determination that certain properties are contaminated. The Board requested submissions from the parties on the issue of whether a preliminary determination that a site is a contaminated site constitutes an appealable decision under section 43 of the *Waste Management Act*.

The Board found that a preliminary determination did not constitute a "decision" within the meaning of section 43. The Board found that the Legislature intended to distinguish between preliminary determinations and final determinations for the purposes of an appeal when it enacted section 26.4(5) of the Act, which expressly provides that a final determination under section 26.4 may be appealed to the Board. The Board found that, based on the statutory scheme set out in Part 4 of the Act, serious consequences such as liability for remediation arise from a final determination of contamination, and not a preliminary determination. Further, a preliminary determination is not an "order," "the imposition of a requirement" or "an exercise of power" within the meaning of section 43.

The Board also considered whether procedural fairness required that a preliminary

determination should be appealable to the Board. The Board found that the inability of a potentially responsible person to appeal a preliminary determination did not affect the procedural fairness of the determination procedure. Accordingly, the Board found that it did not have jurisdiction to hear the appeal. The appeal was dismissed and a request for costs by Sanbo Developments Limited was denied.

2001-WAS-016(a) Maurice Bailey, Porrah Development Ltd. and Harrop Environmental Services Inc. v. Assistant Regional Waste Manager (Pacific Regeneration Technologies Inc., Third Party)

Decision Date: August 30, 2001

Panel: Alan Andison

The Appellants appealed the issuance of an amended permit by the Regional Manager on the ground that the amended permit was inconsistent with the directions of the Board, as stated in an earlier decision. The Appellants requested that the appeal proceed by way of written submissions. The Board subsequently advised all parties that it was unclear whether the revisions in the amended permit issued were inconsistent with its earlier directions, and also whether the decision to issue the amended permit could be appealed to the Board. The parties were given an opportunity to provide submissions on those matters, to assist the Board in determining whether it had jurisdiction over the appeal.

The parties all agreed that the Regional Manager's issuing of the amended permit constituted a decision and was appealable under the provisions of the *Waste Management Act*. The Board agreed that an appealable decision had been made, but limited the appeal to those matters related to the amended permit that were raised in the Appellants' notice of appeal. As all of the parties consented to participate in a mediation process, the Board found it unnecessary to deal with the Appellant's application to proceed by way of written submissions.

2001-WAS-022 Fording Coal Limited v. Director, Pollution Prevention & Remediation Branch

Decision Date: October 30, 2001

Panel: Alan Andison

Fording Coal Limited appealed the decision to name its operation in an "Environmental Protection Noncompliance Report". The Board requested that the parties provide submissions with respect to whether the naming of Fording in the report constituted an appealable decision under section 43 of the *Waste Management Act*.

The Board found that the naming did not constitute a "decision" within the meaning of section 43 of the Act. Rather, it was an administrative measure to identify operations whose compliance record was of concern to the Ministry of Water, Land and Air Protection, and was based on information from such sources as inspections, reviews of data and audits.

The Board also found that naming Fording in the report was not an exercise of discretion made by a manager, director or district director, as required under section 44 of the Act. Rather, it was a ministerial decision, which is not subject to appeal pursuant to section 44(2). Therefore, the Board did not have the jurisdiction to hear the matter and, accordingly, dismissed the appeal.

2001-WAS-026(a); 2001-WAS-032(a) Atlantic Industries Ltd. v. Regional Waste Manager (Beazer East, Inc., Canadian National Railway Company, Third Parties)

Decision Dates: January 31, 2002

Panel: Alan Andison

Atlantic Industries Ltd. appealed 2 letters in which the Regional Manager stated that Atlantic was in non-compliance with its obligation under a

remediation order. The Board offered the parties an opportunity to provide submissions on whether the letters constituted decisions that could be appealed to the Board under section 43 of the *Waste Management Act*.

The Board found that the letters did not constitute determinations under section 27.1 of the Act.

The Board found that the Regional Manager's findings that Atlantic was in non-compliance with the order did not constitute the "making of an order" under section 43(a) of the Act. Next, the Board found that the findings in the letters did not constitute "an imposition of a requirement" under section 43(b). The Board also found that the letters were not "an exercise of power" under section 43(c). Lastly, the Board noted that sections 43(d) and (e) did not apply. Therefore, the Board found that it had no jurisdiction under section 44 of the Act to hear the appeals. Accordingly, the appeals were dismissed.

2001-WAS-029 Fording Coal Limited v. Conservation Officer

Decision Date: November 5, 2001

Panel: Alan Andison

Fording Coal Limited appealed the Conservation Officer's refusal to withdraw an official warning letter issued to it. The Board considered whether the issuance of the warning letter or the refusal to withdraw it constituted a decision that could be appealed to the Board.

The Board found that the warning letter was an administrative measure that is part of the enforcement strategy of the conservation officer service. Because the warning letter was not issued in accordance with any statutory authority under the *Waste Management Act*, it did not constitute a "decision" that may be appealed to the Board.

The Board also found that since the issuance of a warning letter is not an appealable "decision," neither is the refusal to withdraw a warning letter. As section 44 limits the Board's jurisdiction to hearing appeals with respect to "decisions" as defined in section 43 of the Act, the Board found that it had no jurisdiction to hear the matter. The appeal was dismissed.

2001-WAS-030 Dave Stevens v. Regional Waste Manager (Cheslatta Forest Products Ltd., Third Party)

Decision Date: February 28, 2002

Panel: Alan Andison

This was an application to dismiss the appeal filed by Mr. Stevens on the grounds that he lacked standing to appeal the Regional Manager's decision to issue a permit to Cheslatta Forest Products Ltd. to operate a beehive burner in the Ootsa Lake area.

Mr. Stevens stated that he travelled occasionally for work or pleasure to the area in and around Burns Lake, and that this took him close to the location of the burner. The Board found that Mr. Stevens had not produced any evidentiary basis upon which the Board could reasonably find that he was a "person aggrieved" for the purposes of the Act. Specifically, the Board found that Mr. Stevens provided no evidence that smoke would, or even could, make its way from the burner site to areas in and around Burns Lake, which is located between 50 and 60 km away. Moreover, Mr. Stevens failed to say how often he travelled to Burns Lake, the length of time he spent in the area, or the time of year during which he travelled.

The Board also found that although Mr. Stevens had a sincere interest in air quality issues and had taken an active role in attempting to improve air quality, this was not sufficient to make him a "person aggrieved" under the Act.

Accordingly, the Board was not satisfied that Mr. Stevens' interests were personally affected by the emissions from the burner. The Board concluded that Mr. Stevens did not have standing to appeal the Regional Manager's decision. Cheslatta's application to dismiss the appeal was granted.

2001-WAS-033(a) Ashcroft Manor & Teahouse Ltd., Kim Jenner and Audrey Nelson v. Assistant Regional Waste Manager (Greater Vancouver Regional District, Third Party)
Decision Date: December 21, 2001
Panel: Alan Andison

The Ashcroft Manor & Teahouse Ltd. applied for a stay of the Regional Manager's decision to issue an approval to the Greater Vancouver Regional District ("GVRD") to discharge biosolids to a ranch adjacent to it.

The Board found that the Ashcroft Manor & Teahouse Ltd. failed to demonstrate that irreparable harm would result to human health or its business interests if a stay was not granted. The Board also found that the balance of convenience in this case favoured denying the stay. The Board found that a stay would result in increased ranching costs to the GVRD, and would jeopardize its ability to continue a 5-year research project for which it had received significant federal funding. Accordingly, the application for a stay was denied.

Water Act

1995-WAT-062 Julia Connor v. Deputy Comptroller of Water Rights
Decision Date: June 7, 2001
Panel: Margaret Eriksson

Julia Connor appealed a decision of the Deputy Comptroller to amend the date of precedence of a conditional water licence. By consent of the parties, the appeal was dismissed.

99-WAT-45 Trevor D. Marshall v. Assistant Regional Water Manager (Alexis Creek Ranch Inc., Third Party)
Decision Date: April 18, 2001
Panel: Cindy Derkaz

This was an appeal by Trevor D. Marshall of the decision of the Regional Manager to amend a conditional water licence held by the Alexis Creek Ranch. The original licence authorized the diversion of water to irrigate a portion of a cattle ranch. The amendment authorized industrial stockwatering as an additional purpose, and authorized a trough as part of the works. A new conditional water licence reflecting the amendments was substituted for the existing licence, and had second priority on the stream. Mr. Marshall, who had a third priority licence, sought an order cancelling the substituted licence.

Mr. Marshall argued that, although the new licence authorized less acre feet of water per annum than did the old licence, the new licence authorized the irrigation of more land and therefore more water would in fact be diverted. The Board found that the number of acre feet authorized to be used under the licence determines the quantity of water that may be diverted, not the amount of land that will be irrigated. The Board found that under the amended licence there will be more water available for downstream use.

Mr. Marshall also argued that Alexis Creek Ranch acquired a right to divert or use water by prescription, which is prohibited under section 2 of the *Water Act*. The Board found that Alexis Creek Ranch did not acquire the right to divert or use water by prescription. It acquired the right to use part of its licensed water allocation for a different purpose. In addition, the Regional Manager

properly considered the relevant information before approving the amendments. Furthermore, the substituted licence is not a new licence, and retains the original licence's priority date.

Finally, Mr. Marshall expressed concern that fish may be adversely affected by industrial stockwatering. In particular, streambanks may be trampled, thereby causing habitat destruction and contamination of the water. The Board found that the Regional Manager was not advised that fish inhabited the stream until after he had authorized the amendment. In light of the new evidence showing that fish inhabit the stream, the Board referred the matter back to the Regional Manager to further amend the licence to include any reasonable and appropriate provisions to protect fish. The appeal was dismissed.

2000-WAT-005 Frank Fugger and Gayle Fugger v. Assistant Regional Water Manager
Decision Date: June 1, 2001
Panel: Marilyn Kansky

Frank and Gayle Fugger appealed the decision of the Regional Manager refusing to issue them a water licence. The licence application was for the use of water from Adams Lake for domestic purposes. They sought an order issuing the licence, and a decision that they are entitled to divert water for domestic purposes without a licence.

The Regional Manager submitted that the Appellants were not "owners" and therefore could not apply for a licence. The Board found that the Appellants have possession of an interest in land, which is sufficient to establish ownership as defined in the *Water Act*. The Board referred the matter back to the Regional Manager for reconsideration, as the licence was refused solely on the basis that the Appellants were not owners of the land.

The Board also found that the Act allows for unrecorded water that is subject to a water reservation to be diverted for domestic use without a licence. However, the Board found that the Appellants proposed to make changes in and about the lake channel that went beyond merely diverting the water from its channel. As such, the Appellants would need to have an approval before making the proposed changes in and about the lake channel. The appeal was allowed, in part.

2000-WAT-006 Fritz Zens v. Assistant Regional Water Manager (Tseshaht First Nations, Third Party)
Decision Date: May 8, 2001
Panel: Carol Quin

Fritz Zens appealed the decision of the Regional Manager refusing to issue him a water licence to divert and use water from McCoy Lake, to irrigate his fields.

Mr. Zens appealed on several grounds including that the water level in the lake was at record levels; the likelihood of the water level returning to its former level was remote; there had been a decrease in water use by existing water licence holders; and that he should be compensated for the loss of arable land due to the high water levels. He sought an order reversing the Regional Manager's decision and granting him a water licence.

The Regional Manager argued that there was insufficient water to support further licensed water demands and to maintain fish resources in the lake; that Mr. Zens had not received permission to cross First Nations lands to access the lake; and that the water levels in the lake could return to former levels. The Regional Manager indicated that no further water licences could be issued because of existing licences on McCoy Lake and because of a 1922 Order in Council reserving all unrecorded water in the area that includes the lake.

The Board concluded that it was unable to make a finding on the issue of whether the Regional Manager was prevented from issuing a

licence to the Appellant because of other licences on the Lake and Order in Council 842/22.

Assuming that it may be possible to issue a licence, the Board found that there were sufficient grounds for the Regional Manager to refuse the licence. Any water that may be available due to decreased water use by current licences can not be re-licensed until those licences are abandoned or cancelled. Further, although the lake was higher than historic levels, this increase was primarily due to blockages by beaver dams and natural deposits, which, if removed, could return the lake to its former lower level. The Board expressed concerns regarding the possible impact to fish, the absence of an easement over First Nations' land to the lake, and insufficient consultation with the First Nation. The Board upheld the Regional Manager's decision. The appeal was dismissed.

2000-WAT-017 Sicamous Narrows Enhancement Society v. Engineer under the Water Act (Fisheries and Oceans Canada, Third Party)
Decision Date: December 7, 2001
Panel: Carol Quin

Sicamous Narrows Enhancement Society ("SNES") appealed the Engineer's refusal to grant an approval for dredging an area in Sicamous Narrows, including portions of an area identified as critical habitat for juvenile salmon. SNES submitted that the local houseboat industry requires more moorage space to ensure that enough boats are available during the entire houseboat rental season.

The Board found that SNES presented insufficient evidence to show that the Narrows was becoming increasingly shallow because of siltation in the channel, or that houseboat mooring was being negatively affected by siltation. The Board further held that SNES had provided insufficient evidence to establish that the proposed dredging would not harm critical fish habitat.

The Board held that SNES had not fully explored all alternatives to dredging prior to submitting its proposal. Lastly, the Board concluded that although it recognized the important economic interests of the business community of Sicamous, there was insufficient justification to negatively impact an important fish-rearing habitat, which also has important provincial economic ramifications. Accordingly, the appeal was dismissed.

2000-WAT-021 Blake Bolton v. Engineer under the Water Act (Ministry of Environment, Lands and Parks and Fisheries and Oceans (Canada), Third Parties)
Decision Date: June 1, 2001
Panel: Joan Young

Blake Bolton appealed the decision of the Engineer refusing to grant an approval to make changes in and about a stream. The approval sought was to authorize the replacement of material in the banks of Bings Creek to prevent erosion and reshape the bank.

Mr. Bolton appealed on several grounds, including that the original removal of vegetation occurred more than 30 years before, and that proposed stabilization changes would enhance fish habitat conditions. He sought an order reversing the Engineer's decision and granting the approval.

The Board found that the proposed works and changes were not adequately engineered or designed to protect the bank from erosion, nor would they mitigate the negative effects of bank erosion. The Board found that the proposal would result in an unacceptable diminution of water quality, including harmful impacts on fish habitat. The Board upheld the Engineer's decision. The appeal was dismissed.

2001-WAT-011, 2001-WAT-014 Kalesnikoff Lumber Co. Ltd. v. Regional Water Manager (572946 BC Ltd., Third Party)
Decision Date: January 2, 2002
Panel: Alan Andison

Kalesnikoff Lumber Co. Ltd. appealed two orders by the Regional Manager; one cancelling a conditional water licence, the other cancelling a final water licence. By consent of the parties, the appeal from the cancellation of the conditional water licence was dismissed, and the Regional Manager's order respecting the final water licence was varied.

Wildlife Act

98-WIL-022 Neil Ouellet v. Regional Wildlife Manager
Decision Date: October 12, 2001
Panel: Alan Andison

Neil Ouellet appealed the Regional Manager's decision to not issue him another assistant guide licence within the Province of British Columbia. By consent of the parties, the Board ordered that the matter be referred back to the Regional Manager for a new hearing.

98-WIL-030 Doris Ouellet v. Deputy Director of Wildlife
Decision Date: October 22, 2001
Panel: Alan Andison

The Parties agreed to a consent order that disposed of the appeal. The first term of the order was that Doris Ouellet was ineligible to obtain or hold a guide outfitter licence for a period of 10 years ending on July 31, 2008. The second term was that she was ineligible to obtain or hold an assistant guide outfitter licence until April 1, 2005, and until she successfully completed the Conservation Outdoor Recreation Education program.

1999-WIL-014 David Dorsey v. Regional Wildlife Manager
Decision Date: March 1, 2002
Panel: Joan Young

Mr. Dorsey appealed the Regional Manager's decision to grant him an annual guide outfitting quota of 14 bull moose per year. Mr. Dorsey sought an order increasing his quota of bull moose to 16 per year.

The Board found that although quotas were higher in previous years, this did not justify an increase in Mr. Dorsey's current quota. The Board also found that Mr. Dorsey had submitted insufficient evidence to establish, on a balance of probabilities, that the moose population in the areas in question had increased to the point that his quota should be increased to 16. The Board held that the survey methodology used by the Ministry is the accepted methodology. Consequently, there was no basis for the Board to conclude that errors were made.

For these reasons, the Board found that the evidence did not justify an increase in Mr. Dorsey's quota for moose, and that there was insufficient evidence to establish that the quotas set by the Regional Manager were unreasonable. Accordingly, the appeal was dismissed.

2000-WIL-015 Jochen Adalbert Neumann v. Deputy Director of Wildlife
Decision Date: May 20, 2001
Panel: Alan Andison

Mr. Neumann appealed a decision of the Deputy Director to suspend his hunting and angling privileges. The parties subsequently agreed to a consent order that disposed of the appeal by making

several amendments to the original decision. Accordingly, the Board ordered that Mr. Neumann's period of ineligibility to obtain a hunting licence be reduced by 7 years, and his ineligibility to obtain an angling licence be reduced by 3 years. By consent, the appeal was allowed in part.

2000-WIL-016 Jody Roberts v. Deputy Director of Wildlife

Decision Date: May 9, 2001

Panel: Alan Andison

Jody Roberts appealed a decision of the Deputy Director to suspend his hunting privileges on the basis that the Deputy Director erred in his findings of fact, and that the penalty imposed was too harsh. Mr. Roberts subsequently provided the Deputy Director with additional information, and he agreed to make several amendments to his original decision. Accordingly, the Board ordered that a number of amendments be made to the Deputy Director's decision. As a result, Mr. Roberts' period of ineligibility to obtain a hunting licence was reduced by two years, and the requirement that he take the Conservation Outdoor Recreation Education program was eliminated. By consent of the parties, the appeal was dismissed.

2000-WIL-019 Justin Gyger v. Regional Fish and Wildlife Manager

Decision Date: October 5, 2001

Panel: Tracey Cook

Justin Gyger, an angling guide, appealed the decision of the Regional Manager to adjust his 100 rod days on the Clore River to zero.

The Board found that Mr. Gyger wrongly applied for, and the Ministry initially granted, unclassified rod days on a classified water (the Clore River). When the mistake was discovered, the Regional Manager correctly adjusted Mr. Gyger's rod days on the Clore River to zero.

The Board also considered whether it should grant Mr. Gyger a permit or licence for additional rod days on the Clore River. The Board found that that Mr. Gyger had already received fair compensation for the Ministry's error. Additionally, the Board found that there was insufficient evidence to issue a permit to Mr. Gyger. Accordingly, the appeal was dismissed, and Mr. Gyger's application for costs was denied.

2000-WIL-021 Jerry Coburn v. District Conservation Officer

Decision Date: July 31, 2001

Panel: Alan Andison

Jerry Coburn appealed the decision of the Conservation Officer refusing to issue him a permit transferring the right of property in a dead immature bald eagle that died when it collided with Mr. Coburn's truck. In refusing to issue Mr. Coburn a permit, the Conservation Officer relied on section 6(1)(c) of the *Permit Regulation* that prohibits a Regional Manager from issuing a permit transferring the right of property in eagles.

Mr. Coburn's application did not specify whether he sought a permit for possession or for the transfer of right in property. As such, the Board considered his application for both. The Board found that Mr. Coburn did not qualify for a possession permit under the *Permit Regulation* and that the Conservation Officer did not err in refusing to issue Mr. Coburn a permit transferring the right of property in the eagle. The appeal was dismissed.

2000-WIL-022 Garry Thoms and Jean Thoms v. Regional Wildlife Manager

Decision Date: January 8, 2002

Panel: Glen Ewan

Garry and Jean Thoms appealed the decision of the Regional Manager refusing to grant them a permit to possess live fish. They wished to

farm trout in a pond dug on their property located near the Moyie River. They requested that the refusal be set aside and a permit be issued to them. The Regional Manager submitted that there was a significant risk to wild fish stocks and habitat in the Moyie River if the fish farm was permitted because the pond was located too close to the river, and because there was a risk that a berm could fail or the river could flood the area.

The Board accepted the evidence of the Regional Manger that an inundation of the berm would eventually occur. The Board also found that the location of the proposed fish farm could result in an escape of fish. The Board, therefore, concluded that the risk of harm to the eco-system of the Moyie River, its natural fish stocks, and their habitat was too great to allow a domestic fish farm in a floodplain that could be inundated by the river. Accordingly, the appeal was dismissed.

2001-WIL-001 William Cheal v. District Conservation Officer

Decision Date: July 10, 2001

Panel: Margaret Eriksson

William Cheal appealed the decision of the Conservation Officer refusing to issue him a permit transferring property in a dead peregrine falcon. The permit was refused because the Conservation Officer estimated the value of the falcon to be over $200.

At the hearing, Mr. Cheal indicated that his intention was to have a complete autopsy performed on the falcon. It was also his intention to donate the mounted falcon to a school or museum in the area in which it had been found.

The Board found that Mr. Cheal did not qualify for a permit under the *Permit Regulation*. The appeal was dismissed.

2001-WIL-004 Kerry Eglin v. Regional Wildlife Manager

Decision Date: December 20, 2001

Panel: Alan Andison

Kerry Eglin appealed the decision of a Conservation Officer refusing to issue him a permit to possess a dead great grey owl that he found. Mr. Eglin asked that the decision be set aside, and that he be issued a permit to possess the owl.

The Board found that the Regional Manager erred by directing staff not to issue any permits for great grey owls, and fettered his discretion by making a general determination about the value of great grey owls, rather than considering the value of the particular owl found by Mr. Eglin. However, the Board held that the appeal hearing cured the defects in the previous decision-making process.

The Board then considered whether a permit should be issued to Mr. Eglin. The Board found that he did not qualify for a possession permit under the *Permit Regulation*. Accordingly, the appeal was dismissed.

2001-WIL-005 Shane Brady v. Regional Wildlife Manager

Decision Date: March 1, 2002

Panel: Alan Andison

Mr. Brady appealed the decision of the Regional Manager refusing to issue him a permit to possess a sheep skull and horns. Mr. Brady asked that the decision be set aside, and that he be issued a permit so that the sheep skull and horns could be donated to the Wild Sheep Society of B.C.

The Board found that Mr. Brady did not qualify for a possession permit under the *Permit Regulation*. The appeal was dismissed.

2001-WIL-006 Robert Edward Fraser Swalwell v. Regional Wildlife Manager
Decision Date: July 30, 2001
Panel: Alan Andison

Robert Swalwell appealed the decision of the Regional Manager refusing to issue him a permit for California Big Horn Sheep horns. The permit was refused because the Regional Manager estimated the value of the horns to be over $200. Mr. Swalwell requested that he be granted a permit to possess the horns, which he would make available for educational purposes.

The Board found that the Regional Manager did not err in refusing to grant Mr. Swalwell a permit under section 6(1)(d) on the basis that the horns were valued at over $200.

The Board found that Mr. Swalwell's primary purpose for requesting possession of the horns was for personal use, and that any use for educational purposes would be secondary. Accordingly, the Board found that Mr. Swalwell did not qualify for a permit to possess the horns under section 2(k) of the *Permit Regulation*.

The Board also considered the application of section 6(1)(b) of the *Permit Regulation*. The Board found that this section applied because the sheep died accidentally. The Board also found that special circumstances existed which justified issuance of a permit transferring the right of property in the horns to Mr. Swalwell. The Board found that section 6(1)(d) did not confine the application of section 6(1)(b), but rather the value of the horns was one of several considerations in assessing the application. The Board held that to find otherwise would lead to an absurdity. Having determined that special circumstances existed and that issuing a permit for the horns would not be contrary to the proper management of wildlife resources, the Board directed the Manager to issue a permit transferring the right of property in the horns to Mr. Swalwell. The appeal was allowed.

2001-WIL-009 J. Steven Mohr v. Regional Wildlife Manager
Decision Date: August 7, 2001
Panel: Carol Quin

Mr. Mohr appealed the decision of the Regional Manager with respect to the quotas in his guide outfitter licence for 2001/2002. The quotas limited the number of black bear and cougar that may be harvested within Mr. Mohr's guide outfitting territory. Mr. Mohr requested that the quotas be removed from his licence or, alternatively, be significantly increased.

Mr. Mohr submitted that his black bear quota was not reflective of current species populations, and that he needed to hunt more bears in the southern regions of his territory in order to improve the viability of his business. He further submitted that his clients should be allowed to harvest "problem" bears within his territory.

The Regional Manager submitted that the quotas attached to Mr. Mohr's 2001/2002 licence were the same as those in his previous licences, and that he only used a fraction of his quota. The Regional Manager submitted that allowing guide outfitters to hunt "problem" bears would not be an appropriate recreational activity for the B.C. government to condone.

The Board found that Mr. Mohr provided insufficient evidence to establish that the black bear population in his territory was such that his quota should be increased or eliminated, or that his quota should be redistributed within his territory. Since Mr. Mohr's clients had harvested only 1–3 bears in each of the previous 2 seasons, the Board found that his current quota was more than adequate. The Board agreed with the Regional Manager that allowing guide outfitters to hunt "problem" bears

could create a public safety risk and should not be promoted.

The Board found that Mr. Mohr provided no evidence to establish that his cougar quota should be increased. The appeal was dismissed.

2001-WIL-010 Gerald Hansen v. Regional Wildlife Manager
Decision Date: August 15, 2001
Panel: Alan Andison

Gerald Hansen appealed the decision of the Regional Manager refusing to issue him a permit for a dead golden eagle that he found. Mr. Hansen asked for the decision to be set aside, and that he be issued a permit to possess the eagle.

The Board found that Mr. Hansen did not qualify for a possession permit under the *Permit Regulation*. The appeal was dismissed.

2001-WIL-011 Marvin Hood v. District Conservation Officer
Decision Date: December 10, 2001
Panel: Alan Andison

Marvin Hood appealed the decision of the Conservation Officer refusing to issue him a permit for a dead golden eagle that he found. Mr. Hood asked that the Conservation Officer's decision be set aside, and that he be issued a permit to possess the eagle.

The Board found that Mr. Hood did not qualify for a possession permit under the *Permit Regulation*. The appeal was dismissed.

2001-WIL-012 Allan Crawford v. Regional Wildlife Section Head
Decision Date: February 5, 2002
Panel: Alan Andison

Allan Crawford appealed the decision of the Regional Section Head refusing to issue him a permit for a dead snowy owl that he found. Mr. Crawford asked that the decision be set aside, and that he be issued a permit to possess the owl.

The Board found that Mr. Crawford did not qualify for a possession permit under the *Permit Regulation*. Accordingly, the appeal was dismissed.

2001-WIL-013 Paul Marriott v. Regional Wildlife Manager
Decision Date: December 17, 2001
Panel: Alan Andison

Paul Marriott appealed the decision of the Regional Manager refusing to issue him a permit for a dead bald eagle that he found. Mr. Marriott asked that the Regional Manager's decision be set aside, and that he be issued a permit to possess the eagle.

The Board found that Mr. Marriott did not qualify for a possession permit under the *Permit Regulation*. Accordingly, the appeal was dismissed.

2001-WIL-015 Robert Aaron Milligan v. Regional Fish & Wildlife Manager (The Attorney General of British Columbia and Nisga'a Nation, Third Parties)
Decision Date: March 26, 2002
Panel: Alan Andison

Mr. Milligan appealed the decision of the Regional Manager to suspend his guide outfitter licence and guide outfitter certificate, place conditions on his re-qualification for a guide outfitter licence, and require him to sell his guide area. In 1998, Mr. Milligan was found guilty of 23 offences under the *Wildlife Act*, the *Fisheries Act* and the *Firearm Act*.

The Board first addressed whether the *Nisga'a Final Agreement Act* should be considered in determining the outcome of the appeal, given that Mr. Milligan's guide territory covers Nisga'a lands. Although the Board found that the potential effects of the *Nisga'a Agreement* were irrelevant to its decision in the appeal, the Board noted that the

parties are obliged to consider and comply with any requirements of the *Nisga'a Agreement* that could apply.

Next, the Board considered whether Mr. Milligan's guide outfitting privileges should be reinstated immediately, and under what conditions. The Board found that a suspension period of approximately 8 years was appropriate as both a penalty to Mr. Milligan and a deterrent to the public. However, the Board rescinded the requirement that he must first re-qualify as an assistant guide, and hold an assistant guide's licence for at least 2 years before he could re-qualify as a guide outfitter.

The Board also rescinded the requirement that Mr. Milligan sell his guide area. The appeal was allowed, in part.

2001-WIL-016(a) Ignace Burke, Julie Michel, Lynn Michel v. Regional Wildlife Manager (Larry Burke, George Patrick Michel, Eddy Thomas, George Whitehead, Third Parties; North East Aboriginal Trappers Society, Applicant)
Decision Date: October 5, 2001
Panel: Alan Andison

The Third Parties asked the Board to add their organization, the North East Aboriginal Trappers Society ("NEAT"), as a party to this appeal regarding the registration of a trapline.

In considering whether to grant NEAT full party status, the Board considered whether NEAT had a valid interest in participating and whether it could be of assistance in this appeal. The Board found that NEAT had relevant evidence to provide with respect to the trapline registration process. However, this evidence would be best presented by NEAT as a witness on behalf of the Third Parties.

Similarly, the Board found that NEAT's interest in the proceedings was identical to that of the Third Parties. In these circumstances, the Board was not satisfied that NEAT would provide the Board with any additional information that could not be provided by the Third Parties. If NEAT were granted party status in these proceedings, it would result in an unnecessary duplication of evidence and argument. Accordingly, the application for party status was denied.

2001-WIL-016(b) Ignace Burke, Julie Michel, Lynn Michel v. Regional Wildlife Manager (Larry Burke, George Patrick Michel, Eddy Thomas, George Whitehead, Third Parties)
Decision Date: October 5, 2001
Panel: Alan Andison

Ignace Burke, Julie Michel and Lynn Michel requested a stay of the decision by the Regional Manager to add additional persons to the registration of a trapline.

The Board determined that the Appellants would suffer irreparable harm if the stay was not granted. Specifically, the Board found that Ignace Burke could suffer a loss of trapping income for the coming season. Moreover, the Board concluded that a change in the registration of the trapline could result in the loss of guiding opportunities for the Appellants. Lastly, there was concern that resource-based companies operating near the trapline could be given information regarding the trapline from the newly registered persons who may not be familiar with the trapline. This could result in development occurring along the trapline, affecting the animal population and resulting in potential long-term harm to the sustainability of the trapline.

Further, the Board found that the balance of convenience favoured a stay, as it would permit Ignace Burke to continue to trap on the trapline as he had in the past, and would allow the Appellants to avoid the loss of other benefits they enjoyed. Accordingly, the application for a stay was granted.

2001-WIL-021 Jeff Beckley v. Regional Wildlife Manager

Decision Date: March 7, 2002

Panel: Carol Quin

Mr. Beckley appealed the Regional Manager's decision to reduce his bull moose quota for 2001 to 1 bull moose, from his previous quota of 2 bull moose. Mr. Beckley argued that the Regional Manager's decision was unreasonable because he had made the decision in a manner that was counter-productive to conserving the moose population.

The Board was satisfied that the Regional Manager made his decision primarily based on the moose population surveys and Ministry population estimates that were available to him. The Board also found that Mr. Beckley did not present any other data to support the claim that the quota reduction was unwarranted and that he provided only anecdotal information to refute the Ministry's information about the declining moose population in the Kootenay area. On the evidence presented, the Board found that the Regional Manager's decision was reasonable. Accordingly, the appeal was dismissed.

2001-WIL-022 Todd Schwartz v. District Conservation Officer

Decision Date: January 7, 2002

Panel: Alan Andison

Todd Schwartz appealed the decision of the District Conservation Officer refusing to issue him a permit for a dead eagle that his wife found. Mr. Schwartz asked that the Conservation Officer's decision be set aside, and that he be issued a permit to possess the eagle.

The Board found that Mr. Schwartz did not qualify for a possession permit under any of the relevant sections of the *Permit Regulation*. Accordingly, the appeal was dismissed.

2001-WIL-023 Don Malenstyn v. Regional Wildlife Manager

Decision Date: March 12, 2002

Panel: Alan Andison

Mr. Malenstyn appealed the decision of the Regional Manger refusing to issue him a permit for a dead eagle that he found. Mr. Malenstyn asked that the decision be set aside, and that he be issued a permit to possess the eagle.

The Board found that Mr. Malenstyn did not qualify for a possession permit under any relevant sections of the *Permit Regulation*. Accordingly, the appeal was dismissed.

Summaries of Court Decisions Related to the Board

Thomas Schreiber v. Environmental Appeal Board

Decision Date: April 5, 2001
Court: B.C.S.C., Mr. Justice McEwan

Mr. Schreiber sought a judicial review of the decision of the Environmental Appeal Board. The Board upheld the decision of the Deputy Director of Wildlife cancelling Mr. Schreiber's hunting and firearms licences and fixing an ineligibility period of 6 years to obtain or renew the licences.

In October 1993, Mr. Schreiber reported having killed a bighorn ram at Dry Creek. Two hunters observed Mr. Schreiber that day in a prohibited area, the Line Creek Mine. Conservation Officers investigated and found a sheep kill site within the mine area, and seized the sheep head from Mr. Schreiber. DNA samples from the kill site and from the head were sent for analyses. The first analysis at a lab in Oregon reported a negative match, while a second analysis from the University of Alberta reported a match. The lab in Oregon acknowledged the superiority of the University of Alberta's analysis.

In November 1995, Mr. Schreiber was convicted in B.C. Provincial Court of offences under the *Wildlife Act*: hunting out of season, possessing dead wildlife unlawfully, and making a false statement in a report. In December 1998, the B.C. Supreme Court overturned those convictions and ordered a new trial due to problems with the expert evidence. However, Mr. Schreiber remained convicted of the additional charge of entering a mine site at an unrecognized point of entry. Crown Counsel ultimately decided not to proceed with a new trial.

On February 24, 1998, the Deputy Director cancelled Mr. Schreiber's hunting and firearms licences, and ordered a 6-year period of ineligibility. This decision noted the Supreme Court findings as well as additional evidence regarding the DNA samples which was not before the Court.

The Board upheld the Deputy Director's decision, finding that the Deputy Director had considered the conflicting DNA test results, that the Supreme Court proceedings were not determinative of the matter before the Deputy Director, and that the penalty imposed by the Deputy Director was reasonable.

On judicial review, the Court upheld the Board's decision. The Court confirmed that where criminal proceedings have been concluded in the accused's favour, an administrative tribunal is not thereby prevented from imposing serious sanctions based upon essentially the same facts. The Court also rejected Mr. Schreiber's argument that there was a violation of procedural fairness because he was not afforded an opportunity to have his own DNA

samples taken of the seized evidence, nor the opportunity to cross-examine the Crown's scientific evidence. The Court found that there was no evidence that Mr. Schreiber had ever requested DNA samples for his own purposes, or that there was any obstacle to his access to witnesses.

Considering the appropriate standard of review for the Board's decision, the Court concluded that standard of review in this kind of case where "the errors alleged to have been made in assessing the evidence are of a technical or legal nature, is essentially that of 'correctness'".

The Court also stated that, with regards to penalty, deference ought to be accorded to the decision of the Deputy Director since he is charged with administering a specialized statutory regime and is in a better position than this Court to make an appropriate determination.

The Court found that the Board was correct in its finding that the Deputy Director had a solid evidentiary basis for finding that the carcass from the mine site and the head in Mr. Schreiber's possession were from the same animal. The Court noted that Mr. Schreiber did not provide evidence to support a different conclusion.

The Court rejected Mr. Schreiber's position that the Board erred in failing to order that the matter be disposed of in his favour because of delays in the hearing before the Deputy Director and the expense of the Crown pursuing different processes. The Court noted that Mr. Schreiber had requested a delay of the Deputy Director's hearing pending the conclusion of his criminal trial. Citing the Supreme Court of Canada decision in *Blencoe v. British Columbia (Human Rights Commission)*, 2000 S.C.C. 44, the Court stated that Mr. Schreiber had not identified any prejudice from the delay leading to unfairness.

The Court further stated that Mr. Schreiber was afforded a fair hearing and the appropriate burden of proof was applied. The Court held that there was no evidence that the Board ignored material evidence relating to the penalty, and no suggestion that the factors cited by the Board or the Deputy Director in arriving at the penalty were inappropriate.

The petition was dismissed.

Turnagain Holdings, Ltd. v. Environmental Appeal Board, W.T. Munro, Deputy Director of Wildlife, Ministry of Environment, Lands and Parks of the Province of British Columbia and Byron Dalziel

Decision Date: June 1, 2001

Court: B.C.S.C., Mr. Justice Cole

Turnagain Holdings Ltd. applied for judicial review of a July 9, 1993 decision of the Board in Appeal No. 92/23 Wildlife, in which the Board upheld the decision of the Deputy Director to deny Turnagain the right to be heard in a hearing under the *Wildlife Act*. The appeal was brought to the Board by Brian Dalziel, in response to the decision of Deputy Director to suspend his guide outfitter licence and cancel his guide outfitter certificate, which he had previously agreed to transfer to Turnagain.

Prior to the hearing before the Deputy Director, the Ministry gave Turnagain notice of the hearing against Mr. Dalziel. The Ministry was aware of the business arrangement whereby Mr. Dalziel held a guide outfitting certificate in trust as agent for Turnagain, who provided the financial backing for the enterprise. However, the Deputy Director refused to grant Turnagain standing to participate in the hearing, as Turnagain did not hold or have any share in the certificate.

At the Board hearing, counsel for Mr. Dalziel and Turnagain argued that because of the contractual relationship between them, Turnagain was owed a duty of fairness, and that the Deputy

Director's refusal to provide Turnagain with the right to be heard had breached the rules of natural justice. The Board rejected this argument on the basis that the purpose of the hearing was to consider Mr. Dalziel's legal right, and that the Deputy Director was required to ensure that the hearing proceed without undue interference from those who did not have a legal right to be part of the disciplinary hearing.

In October 2000, Turnagain filed a petition for judicial review of the July 9, 1993 decision. Its position was that the Board had erred in upholding the Deputy Director's refusal to hear Turnagain, and that it did not have the financial resources to proceed with the matter earlier. The Ministry took the position that to grant the relief requested by Turnagain would result in substantial prejudice or hardship to them because of the delay in bringing the judicial review proceedings.

The Court found that the interest of Turnagain was not simply a contingent interest, rather it was one that was direct, and that the Deputy Director breached the rules of natural justice by refusing to allow Turnagain to call evidence, cross-examine witnesses, and make final submissions. The Court held that the Board erred when it failed to find that the Deputy Director had breached a duty of fairness to Turnagain.

The Court found, however, that the delay in commencing the judicial review was unreasonable, and that substantial prejudice would result with respect to treaty negotiations if the application were granted. When no review was initiated, the British Columbia Treaty Commission included the guide outfitters certificate as an integral part of their negotiations with the Kaska Dena Council. The Court was not convinced that Turnagain lacked the financial resources to proceed with the judicial review in a timely manner.

The petition was dismissed.

Abdul M. Mousa and Barbara Aweryn v. Simon Fraser Health Region and Environmental Appeal Board

Decision Date: June 21, 2001

Court: B.C.C.A., Madam Justice Ryan, Mr. Justice Braidwood, Mr. Justice Hall

Abdul Mousa and Barbara Aweryn (the "Appellants") submitted an application to repair their septic system to the Environmental Health Officer ("EHO"). The EHO refused to issue them a permit. On appeal to the Board, the Board upheld the decision of the EHO on the basis that the proposed repairs would not protect the public health.

The Appellants then filed a petition with the British Columbia Supreme Court seeking various forms of relief under the *Judicial Review Procedure Act*. The Court upheld the decision of the Board and dismissed the Appellants' petition.

The Appellants appealed the Supreme Court decision to the Court of Appeal on several grounds. They sought to adduce new evidence, and challenged several findings of fact made by the Board and accepted by the Supreme Court. They also submitted that the Board and the Supreme Court erred in law by failing to address the legality of a dye test conducted by the EHO, which led him to conclude that the system had failed, as there was no standard procedure for conducting such tests. The Appellants argued that that they should be permitted to operate the septic system as a "non-conforming use" system.

The Court of Appeal found that new evidence would make no difference to the outcome of the appeal before the Board, and that the findings of fact made by the Board were reasonable and supported by the evidence. The Court of Appeal also found that the Appellants failed to establish that the dye test used by the EHO was vague. The Court further held that there was no rationale to allow the Appellants to operate the septic system as

a non-conforming use when its use would constitute a health hazard. The injunction order was upheld.

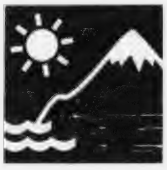
The appeal was dismissed.

Abdul M. Mousa and Barbara Aweryn v. Simon Fraser Health Region and Environmental Appeal Board

Decision Date: December 6, 2001

Court: S.C.C. McLachlin, C.J C., Iacobucci and Bastarache JJ.

The application for leave to appeal to the Supreme Court of Canada was dismissed with costs to the Respondent Simon Fraser Health Region.



Summaries of Cabinet Decisions Related to the Board

There were no orders by Cabinet during this report period concerning decisions by the Board.

APPENDIX I

Legislation and Regulations

Relevant provisions from the *Environment Management Act*, the *Environmental Appeal Board Procedure Regulation*, and each of the statutes from which the Board hears appeals are reproduced below.

Environment Management Act

Environmental Appeal Board

11 (1) The Lieutenant Governor in Council must establish an Environmental Appeal Board to hear appeals that under the provisions of any other enactment are to be heard by the board.

(2) In relation to an appeal under another enactment the board has the powers given to it by that other enactment.

(3) The board consists of a chair, one or more vice chairs and other members the Lieutenant Governor in Council appoints.

(4) The Lieutenant Governor in Council may

(a) appoint persons as temporary members to deal with a matter before the board, or for a period or during circumstances the Lieutenant Governor in Council specifies, and

(b) designate a temporary member to act as chair or as a vice chair.

(5) A temporary member has, during the period or under the circumstances or for the purpose for which the person is appointed as a temporary member, all the powers of and may perform all the duties of a member of the board.

(6) The Lieutenant Governor in Council may determine the remuneration and expenses payable to the members of the board.

(7) The chair may organize the board into panels, each comprised of one or more members.

(8) The members of the board are to sit

(a) as a board, or

(b) as a panel of the board.

(9) If members sit as a panel,

(a) 2 or more panels may sit at the same time,

(b) the panel has all the jurisdiction of and may exercise and perform the powers and duties of the board, and

(c) an order, decision or action of the panel is an order, decision or action of the board.

(10) The number of members that constitute a quorum of the board or a panel may be set by regulation of the Lieutenant Governor in Council.

(11) The board, a panel and each member have all the powers, protection and privileges of a commissioner under sections 12, 15 and 16 of the *Inquiry Act*.

(12) In an appeal, the board or a panel

(a) may hear any person, including a person the board or a panel invites to appear before it, and

(b) on request of

(i) the person,

(ii) a member of the body, or

(iii) a representative of the person or body,

whose decision is the subject of the appeal or review, must give that person or body full party status.

(13) A person or body that is given full party status under subsection (12) may

(a) be represented by counsel,

(b) present evidence,

(c) where there is an oral hearing, ask questions, and

(d) make submissions as to facts, law and jurisdiction.

(14) A person who gives oral evidence may be questioned by the board, a panel or the parties to the appeal.

(14.1) The appeal board may require the appellant to deposit with it an amount of money it considers sufficient to cover all or part of the anticipated costs of the respondent and the anticipated expenses of the appeal board in connection with the appeal.

(14.2) In addition to the powers referred to in subsection (2) but subject to the regulations, the appeal board may make orders for payment as follows:

(a) requiring a party to pay all or part of the costs of another party in connection with the appeal, as determined by the appeal board;

(b) if the appeal board considers that the conduct of a party has been vexatious, frivolous or abusive, requiring the party to pay all or part of the expenses of the appeal board in connection with the appeal.

(14.3) An order under subsection (14.2) may include directions respecting the disposition of money deposited under subsection (14.1).

(14.4) If a person or body given full party status under subsection (12) is an agent or representative of the government,

(a) an order under subsection (14.2) must not be made for or against the person or body, and

(b) an order under subsection (14.2)(a) may instead be made for or against the government.

(14.5) The costs required to be paid by the government under an order under subsection (14.4)(b) must be paid out of the consolidated revenue fund.

(15) If the board or a panel makes an order or decision with respect to an appeal the chair must send a copy of the order or decision to the minister and to the parties.

Varying and rescinding orders of board

12 The Lieutenant Governor in Council may, in the public interest, vary or rescind an order or decision of the board.

Environmental Appeal Board Procedure Regulation

Interpretation

1 In this regulation

"Act" means the *Environment Management Act*;

"board" means the Environmental Appeal Board established under the Act;

"chairman" means the chairman of the board;

"minister" means the Minister of Environment, Lands and Parks;

"objector" in relation to an appeal to the board means a person who, under an express provision in another enactment, had the status of an objector in the matter from which the appeal is taken.

Application

2 This regulation applies to all appeals to the board.

Appeal practice and procedure

3 (1) Every appeal to the board shall be taken within the time allowed by the enactment that authorizes the appeal.

(2) Unless otherwise directed under the enactment that authorizes the appeal, an appellant shall give notice of the appeal by mailing a notice of appeal by registered mail to the chairman, or leaving it for him during business hours, at the address of the board.

(3) A notice of appeal shall contain the name and address of the appellant, the name of counsel or agent, if any, for the appellant, the address for service upon the appellant, grounds for appeal, particulars relative to the appeal and a statement of the nature of the order requested.

(4) The notice of appeal shall be signed by the appellant, or on his behalf by his counsel or agent, for each action, decision or order appealed against and the notice shall be accompanied by a fee of $25, payable to the Minister of Finance and Corporate Relations.

(5) Where a notice of appeal does not conform to subsections (3) and (4), the chairman may by mail or another method of delivery return the notice of appeal to the appellant together with written notice

(a) stating the deficiencies and requiring them to be corrected, and

(b) informing the appellant that under this section the board shall not be obliged to proceed with the appeal until a notice or amended notice of appeal, with the deficiencies corrected, is submitted to the chairman.

(6) Where a notice of appeal is returned under subsection (5) the board shall not be obliged to proceed with the appeal until the chairman receives an amended notice of appeal with the deficiencies corrected.

Procedure following receipt of notice of appeal

4 (1) On receipt of a notice of appeal, or, in a case where a notice of appeal is returned under section 3(5), on receipt of an amended notice of appeal with the deficiencies corrected, the chairman shall immediately acknowledge receipt by

mailing or otherwise delivering an acknowledgement of receipt together with a copy of the notice of appeal or of the amended notice of appeal, as the case may be, to the appellant, the minister's office, the Minister of Health if the appeal relates to a matter under the *Health Act*, the official from whose decision the appeal is taken, the applicant, if he is a person other than the appellant, and any objectors.

(2) The chairman shall within 60 days of receipt of the notice of appeal or of the amended notice of appeal, as the case may be, determine whether the appeal is to be decided by members of the board sitting as a board or by members of the board sitting as a panel of the board and the chairman shall determine whether the board or the panel, as the case may be, will decide the appeal on the basis of a full hearing or from written submissions.

(3) Where the chairman determines that the appeal is to be decided by a panel of the board, he shall, within the time limited in subsection (2), designate the panel members and,

(a) if he is on the Board, he shall be its chairman,

(b) if he is not on the panel but a vice chairman of the board is, the vice chairman shall be its chairman, or

(c) if neither the chairman nor a vice chairman of the board is on the panel, the chairman shall designate one of the panel members to be the panel chairman.

(4) Within the time limited in subsection (2) the chairman shall, where he has determined that a full hearing shall be held, set the date, time and location of the hearing of the appeal and he shall notify the appellant, the minister's office, the Minister of Health if the appeal relates to a matter under the *Health Act*, the official from whose decision the appeal is taken, the applicant, if he is a person other than the appellant, and any objectors.

(5) Repealed. [B.C. Reg. 118/87, s.2.]

Quorum

5 (1) Where the members of the board sit as a board, 3 members, one of whom must be the chairman or vice chairman, constitute a quorum.

(2) Where members of the board sit as a panel of one, 3 or 5 members, then the panel chairman constitutes a quorum for the panel of one, the panel chairman plus one other member constitutes the quorum for a panel of 3 and the panel chairman plus 2 other members constitutes the quorum for a panel of 5.

Order or decision of the board or a panel

6 Where the board or a panel makes an order or decision with respect to an appeal, written reasons shall be given for the order or decision and the chairman shall, as soon as practical, send a copy of the order or decision accompanied by the written reasons to the minister, the Minister of Health if the appeal relates to a matter under the *Health Act*, and to the parties.

Written briefs

7 Where the chairman has decided that a full hearing shall be held, the chairman in an appeal before the board, or the panel chairman

in an appeal before a panel, may require the parties to submit written briefs in addition to giving oral evidence.

Public hearings

8 Hearings before the board or a panel of the board shall be open to the public.

Recording the proceedings

9 (1) Where a full hearing is held, the proceedings before the board or a panel of the board shall be taken using shorthand or a recorder, by a stenographer appointed by the chairman, for a hearing before the board, or by the panel chairman, for a hearing before the panel.

(2) Before acting, a stenographer who takes the proceedings before the board or a panel shall make oath that he shall truly and faithfully report the evidence.

(3) Where proceedings are taken as provided in this section by a stenographer so sworn, then it is not necessary that the evidence be read over to, or be signed by, the witness, but it is sufficient that the transcript of the proceedings be

(a) signed by the chairman or a member of the board, in the case of a hearing before the board, or by the panel chairman or a member of the panel, in the case of a hearing before the panel, and

(b) be accompanied by an affidavit of the stenographer that the transcript is a true report of the evidence.

Transcripts

10 On application to the chairman or panel chairman, as the case may be, a transcript of the proceedings, if any, before the board or the panel of the board shall be prepared at the cost of the person requesting it or, where there is more than one applicant for the transcript, by all of the applicants on a pro rata basis.

Representation before the board

11 Parties appearing before the board or a panel of the board may represent themselves personally or be represented by counsel or agent.

Commercial River Rafting Safety Act

Appeals

6 (1) If the registrar suspends or cancels a registration, licence or permit or refuses to register or issue a licence, the person may appeal to the Environmental Appeal Board established under the *Environment Management Act*.

(2) Section 40(2) to (7) of the *Water Act* applies to an appeal under subsection (1).

Health Act

Power to make regulations

8 (2) In addition to the matters set out in sub section (1), the Lieutenant Governor in Council may make regulations with respect to the following matters:

...

(m) the inspection, regulation and control, for the purposes of health protection provided in this Act, of

...

(ii) the location, design, installation, construction, operation and maintenance of

...

(C) sewage disposal systems,

...

and requiring a permit for them and requiring compliance with the conditions of the permit and authorizing inspections for that purpose;

...

(4) If a person is aggrieved by the issue or the refusal of a permit for a sewage disposal system under a regulation made under subsection (2)(m), the person may appeal that ruling to the Environmental Appeal Board established under section 11 of the *Environment Management Act* within 30 days of the ruling.

(5) On hearing an appeal under subsection (4), the Environmental Appeal Board may confirm, vary or rescind the ruling under appeal.

Pesticide Control Act

Appeals to Environmental Appeal Board

15 (1) For the purpose of this section, **"decision"** means an action, decision or order.

(2) Any person may appeal a decision of the administrator under this Act, or of any other person under this Act, to the appeal board.

(3) The time limit for commencing an appeal is the time limit prescribed by regulation.

(4) An appeal under this section

(a) must be commenced by notice of appeal in accordance with the practice, procedure and forms prescribed by regulation under the *Environment Management Act*, and

(b) subject to this Act, must be conducted in accordance with the *Environment Management Act* and the regulations under that Act.

(5) For the purposes of an appeal under this section, if a notice under this Act is sent by registered mail to the last known address of a person, the notice is conclusively deemed to be served on the person to whom it is addressed on

(a) the 14th day after the notice was deposited with Canada Post, or

(b) the date on which the notice was actually received by the person, whether by mail or otherwise,

whichever is earlier.

(6) The appeal board may conduct an appeal by way of a new hearing.

(7) On an appeal, the appeal board may

(a) send the matter back to the person who made the decision being appealed, with directions,

(b) confirm, reverse or vary the decision being appealed, or

(c) make any decision that the person whose decision is appealed could have made, and that the board considers appropriate in the circumstances.

(8) An appeal does not act as a stay or suspend the operation of the decision being appealed unless the appeal board orders otherwise.

Pesticide Control Act Regulation

Appeals

45 (1) A person who intends to appeal to the board against the action, decision or order of the administrator or of any other person under the Act shall file the appeal in the manner required by subsection (2) within 30 days from the date of the action, decision or order against which the appeal is taken.

(2) The appellant shall file the appeal by mailing notice of appeal by registered mail to the chairman, or leaving it for him during business hours, at the address of the board.

(3) A notice of appeal shall contain the name and address of the appellant, the name of counsel or agent, if any, for the appellant, the address for service upon the appellant, grounds for appeal, particulars relative to the appeal and a statement of the nature of the order requested, and shall be signed by the appellant or on his behalf by his counsel or agent.

(4) Where a notice of appeal does not con form to subsection (3), the chairman may by mail or another method of delivery return the notice of appeal to the appellant together with written notice

(a) stating the deficiencies and requiring them to be corrected, and

(b) informing the appellant that under this section the board shall not be obliged to proceed with the appeal until a notice or amended notice of appeal, with the deficiencies corrected, is submitted to the chairman.

(5) Where a notice of appeal is returned under subsection (4) the board shall not be obliged to proceed with the appeal until the chairman receives an amended notice of appeal with the deficiencies corrected.

(6) **Repealed.** [B.C. Reg. 132/82.]

(7) The procedures on the appeal shall be those set out in the Environmental Appeal Board Procedure Regulation.

Waste Management Act

Definition of "decision"

43 For the purpose of this Part, **"decision"** means

(a) the making of an order,

(b) the imposition of a requirement,

(c) an exercise of a power,

(d) the issue, amendment, renewal, suspension, refusal or cancellation of a permit, approval or operational certificate, and

(e) the inclusion in any order, permit, approval or operational certificate of any requirement or condition.

Appeals to Environmental Appeal Board

44 (1) Subject to this Part, a person aggrieved by a decision of a manager, director or district director may appeal the decision to the appeal board.

(2) Nothing in this section is to be construed as applying in respect of a decision made by the minister under this Act or by the Lieutenant Governor in Council.

Time limit for commencing appeal

45 The time limit for commencing an appeal is 30 days after notice of the decision being appealed is given

(a) to the person subject to the decision, or

(b) in accordance with the regulations.

Procedure on appeals

46 (1) An appeal under this Part

(a) must be commenced by notice of appeal in accordance with the practice, procedure and forms prescribed by regulation under the *Environment Management Act*, and

(b) subject to this Act, must be conducted in accordance with the *Environment Management Act* and the regulations under that Act.

(2) The appeal board may conduct an appeal by way of a new hearing.

Powers of appeal board in deciding appeal

47 On an appeal, the appeal board may

(a) send the matter back to the person who made the decision, with directions,

(b) confirm, reverse or vary the decision being appealed, or

(c) make any decision that the person whose decision is appealed could have made, and that the board considers appropriate in the circumstances.

Appeal does not operate as stay

48 An appeal taken under this Act does not operate as a stay or suspend the operation of the decision being appealed unless the appeal board orders otherwise.

Water Act

Appeals to Environmental Appeal Board

40 (1) An order of the comptroller, the regional water manager or an engineer may be appealed to the Environmental Appeal Board established under the *Environment Management Act* by

(a) the person who is subject to the order,

(b) an owner whose land is or is likely to be physically affected by the order, or

(c) a licensee, riparian owner or applicant for a licence who considers that their rights are or will be prejudiced by the order.

(2) The time limit for commencing an appeal is 30 days after notice of the order being appealed is given

(a) to the person subject to the order, or

(b) in accordance with the regulations.

(3) For the purposes of an appeal, if a notice under this Act is sent by registered mail to the last known address of a person, the notice is conclusively deemed to be served on the person to whom it is addressed on

(a) the 14th day after the notice was deposited with Canada Post, or

(b) the date on which the notice was actually received by the person, whether by mail or otherwise,

whichever is earlier.

(4) An appeal under this section

(a) must be commenced by notice of

appeal in accordance with the practice, procedure and forms prescribed by regulation under the *Environment Management Act*, and

(b) subject to this Act, must be conducted in accordance with the *Environment Management Act* and the regulations under that Act.

(5) The appeal board may conduct an appeal by way of a new hearing.

(6) On an appeal, the appeal board may

(a) send the matter back to the comptroller, regional water manager or engineer, with directions,

(b) confirm, reverse or vary the order being appealed, or

(c) make any order that the person whose order is appealed could have made, and that the board considers appropriate in the circumstances.

(7) An appeal does not act as a stay or suspend the operation of the order being appealed unless the appeal board orders otherwise.

Wildlife Act

Appeals to Environmental Appeal Board

101.1(1) The affected person referred to in section 101(2) may appeal the decision to the Environmental Appeal Board established under the *Environment Management Act*.

(2) The time limit for commencing an appeal is 30 days after notice is given

(a) to the affected person under section 101(2), or

(b) in accordance with the regulations.

(3) An appeal under this section

(a) must be commenced by notice of appeal in accordance with the practice, procedure and forms prescribed by regulation under the *Environment Management Act*, and

(b) subject to this Act, must be conducted in accordance with the *Environment Management Act* and the regulations under that Act.

(4) The appeal board may conduct an appeal by way of a new hearing.

(5) On an appeal, the appeal board may

(a) send the matter back to the regional manager or director, with directions,

(b) confirm, reverse or vary the decision being appealed, or

(c) make any decision that the person whose decision is appealed could have made, and that the board considers appropriate in the circumstances.

(6) An appeal taken under this Act does not operate as a stay or suspend the operation of the decision being appealed unless the appeal board orders otherwise.